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THE SOLICITORS' JOURNAL



VOLUME 105
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CURRENT TOPICS

The Supply of Judges

THE House of Lords used part of the Committee stage of the Criminal Justice Administration Bill to debate the questions of promoting county court judges to the High Court and of increasing the judicial appointments for which solicitors are eligible. This we summarise at p. 1012. Since 1945 only five county court judges have been appointed to the High Court and only one during the last eleven years. While we agree with LORD DENNING that there should be no regular ladder of promotion we do not think that any serious harm would be done by increasing the expectation of promotion which a county court judge has, and we are pleased to see that the LORD CHANCELLOR has undertaken without reservation that he will consider county court judges when he recommends future appointments in the High Court. To make solicitors eligible for the High Court would in effect mean fusion, of which only LORD MESTON was in favour. It would be absurd to appoint as a judge one who had had no right of audience as an advocate. While many solicitors have most of the qualities which go to make a good judge, a barrister, as Lord Denning stressed, is a specialist in the trial of cases. He is trained for twenty, twenty-five or thirty years to go through the facts, to sum up the evidence and to put the case to the jury or the judge and the result is that, as we are repeatedly told by Americans and others, the reputation of our judges stands very high indeed. It is thus a question of experience rather than of intellect or character. On this basis solicitors ought to be eligible to be county court judges, as they are to be stipendiary magistrates. We realise that there are bound to be inconsistencies having regard to the haphazard way in which our legal system has developed. The really satisfactory feature of the debate was that everyone, the Lord Chancellor as well as the Opposition and the Law Lords, agreed that the answer is to have closer relations between the two branches. Unhappily progress is being held up by some mysterious inert mass, although the PRESIDENT OF THE LAW SOCIETY, in his address to the London Regional Conference on Monday, again commended a joint legal education for barristers and solicitors and hoped that the result of talks between The Law Society and the Bar would not be long delayed. Whether this comment is an indication of the stirrings of overdue action, or merely another pious wish, remains to be seen.

Revaluation

THE Ministry of Housing and Local Government expect to have a fairly accurate indication by the beginning of 1962 of changes in the relative proportions of the total rate burden

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borne by houses, industry, shops, offices and other property. The relationship between these sources of rate revenue will change completely with the present revaluation, which, for the first time since 1934, assesses all property at current rental values. The new valuation lists resulting from it will come into force on 1st April, 1963. At present houses are assessed on 1939 rental values; shops and offices pay on 80 per cent. of 1956 values; and industry and freight-transport pay on 50 per cent. of 1956 values. After the 1963 revaluation, which assesses all rateable property in England and Wales at current values, industry, shops and offices will pay full rates. But in case the burden on householders becomes too heavy because the basis of their valuation has been advanced by twenty-four years in one step, the Minister has taken powers in the Rating and Valuation Act, 1961, to derate dwellings for the five years 1963-1968. Circular No. 49/61 (H.M.S.O., 1s. 3d.), dated 20th November, informed local authorities in England and Wales that when the extent of the changes in the proportions of rate burden borne by the various types of property is known, a decision will be taken whether to derate dwellings. The circular says that the aim would be to present to Parliament in the spring of 1962 any orders to vary the scales of deduction and to derate domestic property. It draws local authorities' attention to the Rating and Valuation Act, 1961, which provides for the rerating of industrial and freight-transport hereditaments, the derating of houses for the currency of the 1963 valuation lists, the rationalisation of rate relief for charities and kindred bodies, the valuation of hereditaments occupied by statutory water undertakings, and other measures. None of these provisions will have any effect on assessments or rates until the new valuation lists come into force in 1963.

Amendment to Rent Restrictions Regulations

THE Housing Act, 1961, which came into force last Friday, alters the permitted rent increase under a tenancy controlled by the Rent Acts from 8 per cent. to 12½ per cent. of the amount spent by the landlord on improvements. The Rent Restrictions (Amendment) Regulations, 1961 (S.I. 1961 No. 2239), also operative on 24th November, make the consequential amendments to the forms of notice (and the notes thereto) which have to be served on the tenant by the landlord in order to increase the rent. They also bring up to date statutory references in the notes to other forms prescribed for use under the Rent Act, 1957.

Possessor the "Owner"

As a general rule, where a hire-purchase agreement is entered into in respect of a motor vehicle or other goods, ownership is vested in the finance company and the prospective purchaser has mere possession. In the words of LORD GODDARD, C.J., in *Polisky v. S. and A. Services, Ltd.* [1951] 1 All E.R. 185, the car "becomes the property of the company which lets it out on hire-purchase terms to the purchaser and it follows that the car remains the property of the finance company until the full purchase price is paid." However, in *R. v. Tolhurst and Woodhead* (1961), *The Guardian*, 21st November, the Court of Criminal Appeal held that a person who takes and drives away a motor vehicle which is on hire purchase with the consent of the hirer but without the consent or authority of the finance company does not commit an offence under s. 217 of the Road Traffic Act,

1960. Their lordships reached this conclusion because, for the purposes of that Act, "owner," in relation to a vehicle which is the subject of a hire-purchase agreement, means the person in possession of the vehicle under that agreement (*ibid.*, s. 257 (1)). In the light of this definition, the appellants had not taken and driven away a motor vehicle without having the consent of the owner, who, in this context, was the hirer of the vehicle.

Defective Machinery: Burden of Proof

IN *Davie v. New Merton Board Mills, Ltd.* [1959] A.C. 604, the House of Lords decided that an employer is not liable for the negligence of the manufacturer of an article which he has bought, provided that he has been careful to deal with a seller of repute and has made any inspection which would be made by a reasonable employer. The Court of Session has now affirmed that, where a workman is injured as a result of a defect in machinery supplied by a manufacturer to the workman's employer, it is not for the employer to prove that he had purchased the machine from a reputable manufacturer but for the workman to prove otherwise: *Neill (or McMillan) v. B.P. Refinery (Grangemouth), Ltd.* (1961), *The Guardian*, 30th October. In the words of LORD PATRICK, "it is for a pursuer to prove that the manufacturers, from whom his employers have obtained a tool with a latent defect, were not reputable manufacturers, but were people upon whose care and skill it was not reasonable to rely." To have held otherwise would have been to affirm that an employee bringing an action for damages for personal injury need do no more than prove that he had been injured by a tool or machine supplied by his employers which was dangerous by reason of a defect, even though that defect was latent to them. In the light of the speeches in the House of Lords in *Davie v. New Merton Board Mills, Ltd.*, *supra*, such a proposition is untenable.

Factory "Jokers"

It seems that employees at a factory in Yorkshire are being subjected to practical "jokes" and it is said that a chargehand found his cup of tea full of rivets, a fitter was a target for rivets "fired" across the shop floor and a stud-fixer found a lighted cigarette in his pocket. The foreman has warned those concerned that the "joking" must cease or they will lose their jobs and there can be no doubt that he was wise to take such a firm stand. At common law an employer is under a duty to take reasonable care for the safety of his servants and this includes the duty to provide a competent staff of men (*Wilson and Clyde Coal Co. v. English* [1938] A.C. 57). *Hudson v. Ridge Manufacturing Co., Ltd.* [1957] 2 Q.B. 348, is an example of a case where an employee recovered damages from his employers for breach of this duty. For some four years one of the defendants' employees persisted in tripping up his fellow employees, including the plaintiff. The plaintiff was injured as a result of this skylarking and his action for damages succeeded because the defendants had failed to take effective measures to put an end to the skylarking and, if it happened again, to remove the source of it. However, an employer is not liable in respect of injury resulting from an isolated practical "joke," as in such a case there is no negligence on his part: *Smith v. Crossley Brothers, Ltd.* (1951), 95 Sol. J. 655.

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THE DUTY TO FENCE DANGEROUS MACHINERY

THE Factories Act, 1937, contains detailed and stringent provisions intended to ensure that workmen in factories are not injured by the machinery with which they have to work. The various sections of the Act, supplemented by the numerous and lengthy regulations made under the Act, impose an absolute obligation on the occupiers of factories. In the words of Salmon, J., in *Dunn v. Bird's Eye Foods, Ltd.* [1959] 2 Q.B. 265, at p. 274:—

"The policy of the Legislature seems to be to impose an absolute obligation upon the occupiers of factory premises so to arrange their affairs that accidents of this kind [i.e., accidents arising from a failure to fence machinery] shall not occur however careless their servants may be."

Few would disagree with this legislative policy, and it is for that reason disappointing to discover that the House of Lords has now finally—and it appears irrevocably—decided that there is a hole in the statutory scheme of protection.

Sections 12 to 14 of the Act require that certain machinery "shall be securely fenced." Section 12 deals with prime movers, s. 13 with transmission machinery and s. 14 with "every dangerous part of any machinery." It is upon the proper interpretation to be given to s. 14 that the difficulty has arisen. Clearly, some machinery is obviously and inherently dangerous, and s. 14 will apply without any straining of the language of the section. There are, however, types of machinery which are dangerous for reasons not apparent at first sight. Thus in 1896 the courts were called upon to consider the case of certain looms in a cotton factory. A shuttle had flown out and struck and injured a weaver. The Divisional Court held that the shuttle was capable of being a dangerous part of the machinery. If the shuttles were likely to fly out in that way sufficiently frequently to become a reasonably foreseeable cause of injury they were "a dangerous part of the machinery." The case was *Hindle v. Birtwistle* [1897] 1 Q.B. 192, and in the course of his judgment Wills, J., said:—

"It seems to me that machinery or parts of machinery is and are dangerous if in the ordinary course of human affairs danger may be reasonably anticipated from the use of them without protection."

The question which arises is whether machinery which is dangerous in this rather special sense is required to be securely fenced by s. 14. In many cases both kinds of danger are present and the occupier has to decide whether the fence he provides is intended to keep the machine and its product in or to keep the operator out. Clearly a particular fence may be suitable for the one purpose but not for the other.

Problem section

No difficulty appears to have arisen until in 1937 the present Factories Act was passed. The requirement to fence dangerous machinery became s. 14 and there was added a proviso intended to clarify the position in relation to certain types of machinery which could not be used at all if they had to be fenced by a fixed guard. Section 14 (1) is as follows:—

"14.—(1) Every dangerous part of any machinery, other than prime movers and transmission machinery, shall be securely fenced unless it is in such a position or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced:

Provided that, in so far as the safety of a dangerous part of any machinery cannot by reason of the nature of the operation be secured by means of a fixed guard, the requirements of this subsection shall be deemed to have been complied with if a device is provided which automatically prevents the operator from coming into contact with that part."

In *Close v. Steel Company of Wales, Ltd.* [1961] 3 W.L.R. 319; p. 586, *ante*, the House of Lords dealt with this problem. The appellant had been operating an electric drill when the bit shattered and he was struck and injured in the left eye by one or more pieces which flew out. In an action against the respondents he alleged, *inter alia*, a breach of s. 14 (1). Both the Court of Appeal and the House of Lords held that the risk of grave injury resulting from the shattering of a bit was not reasonably foreseeable, and therefore the bit was not "a dangerous part of . . . machinery" and was not within the scope of the statutory duty. This decision followed the application of the test in *Hindle v. Birtwistle* and was really sufficient to dispose of the case, but both courts went on to consider whether there was in any event a duty under s. 14 (1) to provide a fence to prevent parts of the machine flying out and causing injury.

The argument in favour of interpreting s. 14 (1) so as to impose such a duty may be developed on these lines. A machine is dangerous if in the ordinary course of its working it is likely to throw out broken parts to the peril of those working near to it. In the words of Sir Charles Doughty, "An animal which throws dangerous things at one is just as dangerous as an animal which bites one." The judges in dealing with this situation have fairly consistently taken the same view. They did so in *Harrison v. Metropolitan Plywood Co., Ltd.* [1946] K.B. 255, and *Dickson v. Flack* [1953] 2 Q.B. 464, where they had to consider a spindle-moulding machine. The machine revolved at a high speed and contained sharp cutters which often broke off and flew out, causing injury. Similarly, in *Rutherford v. R. E. Glanville & Sons (Bovey Tracey), Ltd.* [1958] 1 W.L.R. 415, a carborundum wheel which revolved at 4,000 revolutions a minute was apt to disintegrate because of that speed, and when it did so the pieces flew about and could easily cause serious injury. Quite clearly this was dangerous machinery. Now if such machinery is dangerous what should the occupier do to see that it is securely fenced? Surely if the danger lies in the likelihood of flying pieces the fence must be of a character to guard against that likelihood. In short, the machine must be "so fenced as to give security from such dangers as may be reasonably expected," as Lord du Parc said when dealing with a case under s. 13.

Lordly doubts

Unfortunately, two decisions of the House of Lords raised doubts as to the correctness of this view. The first was *Nicholls v. F. Austin (Leyton), Ltd.* [1946] A.C. 493. In that case a girl was feeding wood into a circular saw when a piece of the wood broke off and flew out, injuring her hand. The saw was guarded in such a way as to prevent her putting her fingers in but this guard did not prevent pieces of the material being thrown out. It was held that there was no breach of duty in this respect, although the precise basis of the decision was subject to some doubt. Strictly, it appeared to be a decision that the words "any dangerous part of any machinery" did not cover pieces of the material being worked upon. The section requires machinery to be fenced, not the material it works on. In *Nicholls'* case, however, Lord Simonds said: "The fence is intended to keep the worker out, not to keep the machine or its product in."

The second decision was *Carroll v. Andrew Barclay & Sons, Ltd.* [1948] A.C. 477. This was a case on s. 13, which requires transmission machinery to be securely fenced. A balata driving belt had broken and lashed out, injuring a workman.

There was fencing provided which was adequate to prevent the workman coming into contact with the machine but the fencing was not adequate to prevent the rather unlikely accident which had in fact happened. The House of Lords held that the machinery was "securely fenced" as required by s. 13. The decision might thus have been used merely to illustrate that there is no duty under these sections to guard against dangers which cannot reasonably be foreseen. Lord du Parc said:—

"If machines exist, or are hereafter invented and used, which are dangerous because fragments or loose parts of the machinery are sometimes ejected from them, then I am not prepared to say that s. 14 does not require such machines to be fenced for the purpose of protecting workmen against that danger. If the dictum of my noble and learned friend Lord Simonds in *Nicholls v. F. Austin (Leyton), Ltd.* is to be understood as meaning that such a machine need not be fenced, I respectfully doubt its accuracy, and must reserve my opinion upon it."

Lord Normand said:—

"If a machine may be expected to throw off detachable or broken parts in working, these parts may fall to be treated as dangerous and subject to the requirements of secure fencing."

This analysis was persuasive enough to enable the Court of Appeal in *Dickson v. Flack* [1953] 2 Q.B. 464, *Newnham v. Tagart Morgan & Coles, Ltd.* (1956), *The Times*, 20th July (C.A.), and *Rutherford v. R. E. Glanville & Sons (Bovey*

Tracey), Ltd. [1958] 1 W.L.R. 415, to take the view that s. 14 (1) imposed a duty to fence securely against such dangers as might be anticipated from the machinery itself. Unfortunately in the *Close* case the House of Lords was unable to take this view and considered itself bound by the decisions in the *Nicholls* case and the *Carroll* case (discussed above) to hold that the duty imposed upon an employer by s. 14 (1) to fence every dangerous part of a machine was confined to the prevention of a workman coming into contact with moving parts of the machine and did not comprehend the duty to protect a workman from injury caused by ejected or flying pieces of the machine itself or of the material on which the machine was working.

The decision leaves the law in an unsatisfactory state and it is hoped that legislation will be introduced to complete the statutory protection sought to be given to workmen by the Factories Act. Perhaps at the same time some of the other difficulties which have arisen on the proper interpretation of s. 14 (1) might be resolved. For example, we know that the machinery contemplated by s. 14 (1) must be machinery used as a productive agent in the processes of the factory (per Lord Asquith of Bishopstone in *Parvin v. Morton Machine Co., Ltd.* [1952] A.C. 515) but when is machinery being used in the productive processes of the factory? The answer may appear when the House of Lords has considered the case of *Quintas v. National Smelting Co., Ltd.* [1961] 1 W.L.R. 401; p. 152, ante (C.A.).

D. C. H.

THE SMALL ESTATES (REPRESENTATION) ACT, 1961

OBTAINING grants of representation for small estates can involve the expenditure of a considerable amount of time upon explanations, in addition to the completion of the requisite forms, for an uneconomic return by way of fees. There is, therefore, no reason why solicitors should not have welcomed the passing of the Small Estates (Representation) Act, 1961, on 19th July, and its being brought into operation on 1st January, 1962, by the Small Estates (Representation) Act (Commencement) Order, 1961 (S.I. 1961 No. 2147).

Before the taking effect of the new limits it was possible to apply for a grant of representation to be made in England and Wales to an officer of Customs and Excise where the gross estate did not exceed £500. Section 1 (1) of the 1961 Act raises this limit to one stipulating that the value of the net estate is less than £1,000 and that of the gross estate is less than £3,000. For this purpose "gross estate" means the aggregate of the property real and personal in respect of which estate duty would be payable if estates of under £3,000 gross were liable to estate duty. (The Finance Act, 1954, s. 32, exempted an estate of less than £3,000 gross from estate duty.) For the purpose of calculating the amount of gross estate in this context, property settled otherwise than by the will of the deceased is excluded. So far as "net estate" is concerned, this is related to the value of the net real and personal estate passing under the grant of representation (s. 1 (2)).

Reasons for new limits

The reasons for choosing the new limits were explained in Standing Committee C of the House of Commons during the passage of the Bill, on 29th March, 1961. The £500 gross value had been stipulated in 1894, and such a sum was a very much larger one than £1,000 net in 1961. This limit concerning net value was fixed with an eye on avoiding the necessity of

increasing the staff of Customs and Excise officers who will deal with the increased number of applications anticipated. The gross value limit was justified by two reasons. First, if an estate was of a net value of less than £1,000 but of a gross value of £3,000 or over, it was assumed that it would be fairly heavily encumbered, which might cause legal complications. In such a case a probate registry would be better than a customs and excise office to oversee the necessary formalities. The second point was that already mentioned in parenthesis, namely, that the complications of estate duty assessment do not arise on an estate within this limit.

Customs offices

In England and Wales, in addition to the Principal Probate Registry in London, there are twenty-six widely distributed district probate registries and seven sub-registries where an officer from one of the district registries attends to receive personal applications for grants (for complete list see p. 17 of "The Law List," 1961).

There are no less than 273 offices of H.M. Customs and Excise approved for the receipt of applications for grants of representation in small estates in England and Wales. The offices are situated in places not having probate registries, and are spread out over the country, the counties having the most being Kent with twenty-four, York, twenty-one, Lancaster, seventeen, Surrey, fifteen, Stafford, thirteen, Middlesex, twelve, Essex, eleven, and Devon, Hampshire and Somerset, ten each.

Before the passing of the 1961 Act, approximately 20,000 applications for grants a year were received by customs and excise offices. It has been estimated that the effect of the 1961 Act will be to cause some 14,000 additional cases to go to

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The fee of 15s. stipulated in S.I. 1958 No. 161, fee no. 1 (generally payable upon application for a grant of probate or letters of administration with or without the will annexed, and not applicable only to personal applications), is to be omitted, the minimum sum payable under fee no. 1 henceforth being £1 (for an estate under the value of £1,000).

N. D. V.

Oversea Influence of English Law

MALTA—I

By Professor J. M. GANADO, B.A., Ph.D. (Lond.), LL.D., of the University of Malta.

As regards legal development, Malta is in a unique position among the nations forming part of the British Commonwealth of Nations. Prior to the nineteenth century, it was always closely connected with Southern European countries whose laws and traditions exercised considerable influence on Maltese laws and customs. There is no doubt that the *Corpus Juris* of the Emperor Justinian enacted in 529-534 A.D. was applicable to Malta, since Malta then formed part of the Roman Empire and the Maltese people were Roman citizens. Roman law then had been operative in the island already for several centuries but the precise period in which it was originally introduced is unknown.

The Roman domination lasted until the late sixth century A.D., when Malta was taken over by the Goths and a confused period of invasions followed. Then came a long Arab occupation (870-1090 A.D.), which was terminated by the Norman invasion. Three centuries of feudalism followed, during which Malta was ruled by feudal overlords. In this period, it is quite clear that feudal law as applied in Spain, Naples and Sicily was operative in Malta and that the private law system belonged to the Roman tradition.

In 1530, with the advent of the Knights of St. John of Jerusalem, to whom Malta was given on feudal tenure by Charles V of Spain, a new era commenced. At the beginning of this domination, the laws in operation seem to have been the following: (a) Sicilian and Neapolitan feudal law regulating feudal relations; (b) local usages, some growing independently and some very similar to Sicilian customs; (c) some declarations of private law which the Knights of St. John promised to respect and which were described as *capitoli*; (d) the general Romanistic tradition, which had had

an unbroken application. In the barbaric invasions, private law was not touched by the invaders, as elsewhere, and in the Arab domination the Maltese were allowed to lead their own lives, retaining their own laws and practising their own religion. The same legal tradition was carried on by the Norman, Spanish and Sicilian rulers, and therefore in 1530 it would be true to say that the Roman legal tradition had not been broken.

The Order of St. John was composed of members of the European nobility, and the main influences in the Order were Spanish, French, Italian and Portuguese. The first important collection of laws was issued in 1640 by Grand Master Lascaris Castellar, while the second important compilation of laws was promulgated by Grand Master Caraffa in 1681. It was followed in 1724 by the *Codice* Manoel of Grand Master Manoel de Vilhena, who described it as a digest of the constitutions hitherto promulgated by the Knights, and in his code he thus incorporated also the *Consolato del Mare*, which had been enacted in 1697 by Grand Master Raimond Perellos. Finally, in 1784, Grand Master Emanuel de Rohan promulgated the last code in the history of the Order in Malta: the *Codice Municipale*, also known as *Codice de Rohan*.

All the compilations of the Knights of St. John were based on materials which had been developed in a somewhat piecemeal way. These compilations were never intended to be a complete statement of the law, the order followed in them was not always ideal, and they had to be supplemented by the principles of Roman law, as understood and interpreted in those days. The latest and most important compilation, the *Codice Municipale* of de Rohan, was originally drafted by a Neapolitan jurist. The draft met with opposition from

local jurists and the Grand Master then entrusted the work to a local lawyer, whose draft was accepted with a few modifications. According to an eminent legal historian, Judge Paolo DeBono, the sources of this compilation were: the local, Canon and Sicilian laws, the 1729 constitutions of Victor Amadeus II of Savoy and the laws of Charles II, Ferdinand of Bourbon and Peter Leopold of Lorraine. In addition the precedents of the most eminent foreign tribunals of Italy, France and Spain were followed.

British rule

After a brief period of French occupation, and a successful insurrection against the French forces by the Maltese people, assisted mainly by British land and sea forces, the island was placed under the protection of the British Crown upon the request of the Maltese people. The organisation of the local courts and of the local administration was taken in hand during the governorship of Sir Thomas Maitland, who on 2nd January, 1815, declared as follows:—

"The great principle upon which it is the intention of His Majesty that the government of these islands should be conducted is that there should be a complete separation between the Executive, the Legislative and the Judicial authorities, that each should be independent of the other, and that while, on the one hand, the Judicial authority should be restrained in the closest manner from interfering with the Legislative or Executive, so, on the other, the Executive authority should be prevented from any undue interference with the judicial proceedings."

Measures for ensuring the independence of the judiciary were taken. The judges could not be dismissed *quamdin se bene gesserint*, enjoyed fixed salaries and were forbidden to receive any fee or emolument of any description or to entertain any private application from suitors as professional persons. Despite the doctrine of the separation of powers which had been proclaimed, a Supreme Council of Justice was set up presided over by the Governor, helped by four other members, for the purpose of considering appeals in civil and commercial matters in extraordinary cases of evident injustice and hardship. Subsequently, appeals to the Privy Council were gradually allowed and the Supreme Council of Justice disappeared.

Codification of the law

As early as 1813, the Secretary of State expressed his intention of having a Commercial Code enacted, but apparently nothing materialised until 1831, when a commission made up of three English judges and two Maltese judges was set up in order to draw up five codes: civil, criminal and commercial, civil procedure and criminal procedure. The then Attorney-General, an English barrister, became later the sixth member of the commission. The Neapolitan Code was adopted by the commission as its model, but after some time the English commissioners insisted upon adopting English law as a model and discarding all that had been done. The Maltese judges upheld that English law, not being derived from Roman law, could not be taken as a model, unless it was desired to efface entirely the actual law of Malta. This conflict of opinion considerably delayed the commission's work but ultimately the British Government agreed with the opinion of the two Maltese commissioners and requested them to submit to the Government the Criminal Code that they had already drafted. Another commission composed of five Maltese judges was set up in 1834 and a draft code was produced. Owing to the unsettled political situation and to doubts on the part of the authorities on the model which was to be followed, the draft was revised several times. "Steam communication has decreased the distance between England and Malta

so materially that it becomes daily more important that this Colony should be English not Italian and that the spirit, at least, of English law should be introduced and every encouragement given to the dissemination of the English language," wrote the then Governor to the Secretary of State on 14th May, 1842. In 1842, the code was submitted to Mr. Andrew Jameson, a Scottish lawyer, who drew up a very learned report in which he brought into relief the salient differences between the proposed code and the legal system to which he had been accustomed and suggested many amendments. The Criminal Code was finally enacted in 1854.

The enactment of the Commercial Code took place in 1857. It was based on the French code, but on maritime matters special ordinances based on English law were enacted. Originally, even on maritime law the draft followed French and Italian law, but upon recommendations made by the Board of Trade in a report and a memorandum of 21st November, 1856, the Secretary of State did not approve of the part concerning maritime law, on the ground that in view of the then recent enactment of the Merchant Shipping Act, 1854, a separate treatment of maritime law was unnecessary, and also because it was in the interest of local trade to follow the principles of English maritime law.

The Civil Code was enacted by numerous ordinances between 1855 and 1873. The draft was made by the then Crown Advocate, Sir Adrian Dingli. Of this code it has been said that—

"In its general structure, it closely followed its prototype, the *Code Napoléon*: but even a cursory examination reveals that there is constantly an original mind at work. Apart from the several titles and innumerable articles which have no counterpart in the French code, the law presents a solution to many of the heated controversies which arose after the promulgation of the French code, thus eliminating many doubts" (biography of Sir Adrian Dingli, by J. M. Ganado and J. A. Micallet, in the *Law Journal* (Malta), vol. I, 2, 11).

During the compilation of the code, notes were kept of the sources which were consulted in the formation of each section. The codes referred to were the French, Italian, German, Austrian, and other European codes, and the Civil Code of Louisiana.

Public law

It is in the field of public law that English law has had the greatest influence in Malta. On questions of constitutional law English case-law and textbooks are frequently quoted and followed by the Maltese courts. However, there have been several important departures from English constitutional law principles. For example, a special theory concerning Governmental responsibility was gradually developed whereby the Government was considered as possessing a dual personality: when the Government acts *jure gestionis vel administrationis* it is subject to judicial control and investigation just as any private individual, while, when it acts *jure imperii*, it is not subject to judicial control, if the acts performed were *intra vires* and the proper legal formalities were observed.

The position of the judiciary and the organisation of the courts were modelled upon the more liberal English system, rather than on Continental prototypes. The general division of the courts was into civil, commercial and criminal courts. No distinction ever existed between courts of equity and courts of common law, because this distinction never had any significance in Maltese law. The English doctrine of precedent was not followed. Judgments, especially if there is a series of judgments in the same sense, have great authoritative force but any judge or magistrate is strictly speaking

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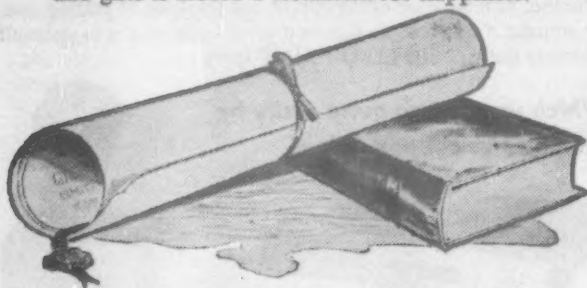
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The legal profession is divided into three sections: advocates, notaries public and legal procurators. Advocates may be briefed directly by the client, and there is no precise counterpart of the English distinction between barrister and solicitor. Notaries public receive public deeds, which include all transfers of immovable property or real rights over immovables or the constitution of such real rights and the making of wills. Legal procurators have the right of audience before inferior courts (presided over by stipendiary magistrates) and several boards; furthermore, they can deputise for litigants before the superior courts mainly for the purpose of filing pleadings.

During the last twenty years, a large volume of legislation inspired by similar legislation in the United Kingdom or in the countries of the Commonwealth has been enacted. The adoption of such legislation as a model has had its effect on the drafting techniques; while most laws in pre-war days were drafted in the style of the *Code Napoléon*, with relatively brief and clear provisions containing enunciation of principles, subsequent legislation has tended to follow the style of English statutory legislation.

The more important legislation can be grouped into three general categories:—

(1) *Fiscal*.—The introduction of income tax as from 1st January, 1949, was certainly the most important step.

No income tax had existed prior to that date. No distinction is drawn between earned and unearned income for purposes of tax. The initial personal deduction is £240 per annum for single persons and £420 per annum for a married couple and £80 per annum for each child. The incomes of husband and wife (with the exception of certain cases of separation) are regarded as one income. Deduction of tax at source has been introduced so far only in regard to dividends deriving from shares in limited liability companies and certain investments abroad.

(2) *Industrial and labour*.—Legislation has been enacted on the legal position and registration of trade unions, and machinery for the conciliation and compulsory arbitration of trade disputes has been constituted. An arbitration tribunal is composed of one of Her Majesty's judges and of two persons selected from two panels nominated respectively by bodies or associations of employers and bodies or associations of workmen. The Conditions of Employment Act, the constitution of wages councils, regulations made for the safety of workmen in factories, compulsory national insurance of employees and other laws follow British trends in the organisation and regulation of industries and industrial relations.

(3) *Social welfare*.—The main legislation enacted concern old age pensions (payable to all poor persons over the age of sixty) and various forms of national assistance.

(To be concluded)

PROTECTIVE TRUSTS AND ADVANCEMENT

THE decision of the Court of Appeal in *Re Pilkington's Will Trusts* [1961] 2 W.L.R. 776; p. 422, *ante*, is, I understand, likely to be the subject of an appeal to the House of Lords. Meanwhile, a simple and useful method of alleviating the burden of estate duty must necessarily be abandoned, whether permanently or temporarily only the future can say. Either way, the case is of first-class importance to anybody who wishes to keep himself abreast of developments in the law of trusts, with particular reference to the impact of estate duty on settled property.

The facts

For the purpose of this article, the essential facts can be very shortly stated. By the will made in 1934 of a testator who died in 1935 a fund was held upon protective trusts for A for life with remainder to his issue as he should appoint, etc., in the manner usual in such trusts. A had three infant children, and for the purpose of avoiding the payment of estate duty on A's death the trustees proposed to exercise the power of advancement conferred by s. 32 of the Trustee Act, 1925, in favour of one of these children ("Penelope"), then aged between two and three, by applying one moiety of her then expectant share of the fund by making it subject to the trusts of a new settlement (there would have been no actual transfer of funds, as the trustees of the original fund were also the trustees of the new settlement). Under the new settlement the income of any property subject thereto would have been available for the maintenance of Penelope during her minority, and would then have been paid to her between the ages of 21 and 30, at which age she would have become entitled to the capital, with trusts over to her children and others if she should die before reaching the age of 30. The power conferred by s. 32 of the Trustee Act was expressly

made applicable to the new settlement. It will thus be immediately apparent that the proposal to exercise the statutory power of advancement in relation to a moiety of Penelope's share in this manner involved the conferment of benefits of various kinds on persons other than Penelope, sometimes subject to the discretion of the trustees not of the original fund, but of the new settlement. The fact that, initially, these would all have been the same persons is irrelevant when the maxim *delegatus non potest delegare* has to be applied, and, whether the Court of Appeal's decision stands or not, this particular feature of the "new settlement," which was no essential part of it, may well be objectionable.

Application to the court

Before putting this scheme into operation the trustees applied to the court for directions whether such an exercise of the power would be improper as offending the rule against perpetuities. Danckwerts, J. (as he then was), held that it would not. The point for discussion was whether the new settlement had to be read into the trusts of the testator's will in order to determine the starting point of the perpetuity period (in which case the postponement of the vesting of Penelope's interest under the new settlement until her age 30 was fatal), or whether a fresh start could be made with the new settlement, in which case a perpetuity period starting with the date of that settlement was within the rule. The learned judge held that the latter was the true view. Now the Court of Appeal, after allowing the Commissioners of Inland Revenue to be joined as parties to the appeal, and hearing them, have reversed the decision below. The principal ground for their decision was that the scheme contemplated, not an advancement within s. 32, but a resettlement of the moiety in question of Penelope's share,

and that was not within the intendment of the section. Upjohn, L.J., also expressed the view that the scheme involved an infringement of the perpetuity rule. Various other points raised by the commissioners as grounds of appeal were also discussed by the learned lord justice and the Master of the Rolls (the third member of the court simply expressed agreement with his colleagues' conclusion), e.g., the *delegatus* point which I have already mentioned; but in the main, for general purposes, this is a decision that an application of property, in purported exercise of s. 32, by transferring it to the trustees of a new settlement for the benefit of the beneficiary is a resettlement, and not within the scope of s. 32.

Need of maintenance

To what extent the court was influenced in this decision by the fact that Penelope, by reason both of her age and of other factors, was in no need of maintenance, it is difficult to say. In *Re Ropner's Settlement Trusts*, *infra*, it was argued (powerfully, I think) that, whatever the age and financial circumstances of the beneficiary, it must be for his benefit to have an interest which is subject to the possibility of defeasance, as, e.g., by the exercise of a power of appointment, converted by the exercise of the power conferred by s. 32 into an indefeasible interest (a view supported by the decision of the Court of Appeal itself in *Re Vestey's Settlement*; *Lloyds Bank v. O'Meara* [1951] Ch. 209, which was cited in *Re Pilkington* but not mentioned in the judgments). No doubt similar arguments were put forward in the recent case. The point is an important one, in that it leads to the question whether *Re Pilkington* has affected the validity of the decision in *Re Ropner's Settlement Trusts* [1956] 1 W.L.R. 902, in so far as that decision was, in the interval between the two cases, frequently accepted as an authority for the view that an out-and-out transfer of capital, directly to the beneficiary if *sui juris* and otherwise to trustees for his benefit, with no other motive in the minds of the trustees than the desire to

avoid estate duty on the property advanced if the tenant for life should live for five years, constituted a proper exercise of the power conferred by s. 32. (In fact, in *Re Ropner*, the transfer was to trustees on the trusts of settlements the details of which are not reported, and on its own facts the case can only be treated as indistinguishable from *Re Pilkington*.) Until the position is clarified, safety lies in assuming that, despite *Re Vestey*, any transfer of property for the benefit of an infant in purported reliance on s. 32 may turn out to be improper, unless the property is required for the immediate conferment of a tangible benefit on the infant—e.g., the payment of school fees. If trustees are minded to exercise this power for the benefit of an infant not in immediate need, and cannot wait until the decision in *Re Pilkington* is reconsidered (either in that case, or in some other in which the same point arises), they should apply to the court for directions.

Necessary provision for protective trusts

Meanwhile, any new settlement which creates protective trusts (a comparative rarity nowadays, but they still occur) should provide that the surrender by the protected life tenant of his life interest in favour of a remainderman shall not constitute a forfeiture of such interest on the part of the life tenant. Such a provision enables that to be done which otherwise may be possible only by the exercise of the statutory power of advancement, but without creating any of the doubts which, since *Re Pilkington*, surround the question whether an out-and-out transfer of capital to an infant remainderman, either by transfer to new trustees for the infant or by transfer in the existing trustees' books to an account for the benefit of the infant, is permissible if there is no motive for the transaction other than the desire to save estate duty on the life tenant's death. The occasions for the addition of such a power will now be rare, but in the cases where the need will arise it will prove a most beneficial feature.

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"FOR THE TERM OF ONE YEAR"

THE report of the county court case of *Lamb v. Boyden* in *Current Law* for September, 1961 (para. 112 (f)) is a short one, but suggests discussion of a number of points.

The plaintiff had let the defendant a flat "for the term of one year commencing on the 26th day of March, 1960, at the weekly rent of £3 17s. 6d. per week, payable by equal weekly payments on the first Saturday of each month." The defendant held over and on 24th May, 1961, the plaintiff served a notice to quit expiring on 23rd June, 1961. The 26th March, 1960, was a Saturday; the 26th March, 1961, a Sunday; the 23rd June, 1961, a Friday. The defence was that as the weekly tenancy created by the holding over began on 26th March, 1961, a Sunday, a notice to quit expiring on a Friday was bad. The plaintiff contended that the effect of the provision for equal payments on a Saturday was that the "one year" meant fifty-two weeks. The learned county court judge decided in favour of the defendant: "one year" could not mean less than 365 days.

The term

It might at one time have been argued that, whenever the one year expired, the new tenancy created by holding over was a yearly tenancy determinable by not less than six months' notice expiring with a year of the tenancy. Three decisions have dealt with this point. There was an exhaustive examination of the position at first instance in *Ladies' Hosiery and Underwear, Ltd. v. Parker* [1930] 1 Ch. 304 (C.A.): some unoccupied land had been let "to hold for a term of three years" from 12th October, 1914, at a rent of £2 a week, the first payment to be made on 19th October, 1914, and subsequent payments weekly. What was ultimately decided by the Court of Appeal was that there was no tenancy at all between the parties to the case, but what matters for present purposes is Maugham, J.'s reasoning about the term of the tenancy by holding over if there were one: for the defendants had counter-claimed a declaration that they were yearly tenants, basing their contention on payments of £2 a week made after the three years. In the light of older authorities,

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the learned judge held that as the original lease had been for three years at a rent of £2 a week, not at a yearly rent of £102 payable weekly, subsequent payments had not been paid either with reference to a year or to any aliquot part of a year: *Richardson v. Langridge* (1811), Taunt. 128, accordingly warranted the proposition that, when the defendant who had paid the £2 a week after expiration of term had made the payments, he was *prima facie* not paying with reference to a year or an aliquot part of a year.

The "*prima facie*" is of some importance, the creation of a tenancy by implication being essentially a matter of inference from facts. This may explain the *prima facie* disturbing decision of Macnaghten, J., a few years later in *Covered Markets, Ltd. v. Green* [1947] 2 All E.R. 140. There had been a seven years' lease of a shop—the documents could not be found, but it was agreed or found that it had run from 1934 or 1935 and that it had reserved a rent of £3 payable weekly in advance. In June, 1946, the tenant was still paying and the landlord accepting such payments. The landlord then gave the tenant eleven days' notice. The learned judge distinguished Maugham, J.'s judgment in *Ladies' Hosiery and Underwear, Ltd. v. Parker*: it did not mean that the proper inference could not be that the tenant held over from year to year; and where the premises were a shop, not a piece of vacant ground, and the tenant had carried on business for seven years under his lease and had been allowed to stay on for several years afterwards, the proper inference was that there was a yearly tenancy on the termination of the seven years.

The reference to being allowed to stay on is somewhat puzzling: one would expect it to be followed by a statement that after so much time a yearly tenancy came into being: that if the landlord had acted within a few weeks, he would have succeeded. Which is not consistent with the view that a yearly tenancy had followed the expiration of the seven years immediately.

But in *Adler v. Blackman* [1953] 1 Q.B. 146 (C.A.), the court considered that Macnaghten, J., had erred. The premises concerned, which were business premises, had first been let by the plaintiff to the tenant on a weekly tenancy; then had come a "term of one year at the inclusive weekly rent of £3 payable weekly in advance in each week during the whole of the tenancy"; when that year expired, the defendant went on paying the weekly rent. A notice appropriate to a weekly tenancy was held valid. Somervell, L.J., pointed out that the decided cases where a yearly tenancy

had been implied had been cases where the rent had been stated as a rent per year, though it might be payable at stated intervals; Jenkins, L.J., agreed that there was no ground for the implication of a yearly tenancy.

Something for nothing

The last-mentioned authority, of course, made it impossible for the defence to argue that a yearly tenancy had come into being; perhaps the only possible way in which the plaintiff could have met that objection would have been one based on what is a curious feature of the authorities mentioned. One year, as the judge held, cannot be less than 365 days (the same applies to "twelvemonth," though before the days of the Interpretation Act, 1889, s. 3—and of the Law of Property Act, 1925, s. 61—"twelve months" was said to mean 12×28 days: *Catesby's Case* (1607), 6 Co. Rep. 61b). But if 52 into 365 or 366 (leap years) "won't go," what did the last payment made by the tenant cover? I am told that the learned judge noticed this point, but merely observed that the tenant had had one day for nothing. By parity of reasoning, the tenants concerned in *Ladies' Hosiery and Underwear, Ltd. v. Parker* and *Adler v. Blackman* must have had something for nothing. In those cases the length, rather than the date of expiry, of the notice, was what mattered; in neither of them was it pleaded that a notice had expired on an impossible date. It was, however, apparently assumed that any new tenancy began the day after the expiry of the fixed term.

There is a further difference between the position revealed in *Lamb v. Boyden* and that dealt with in the other cases: the rent in those cases was weekly and was payable weekly: in *Lamb v. Boyden* it was weekly but payable monthly. Which makes one wonder what the tenant paid the landlord when five weeks had elapsed since the first Saturday in the preceding month, e.g., whether he paid £19 7s. 6d. or £15 10s. on 7th May, 1960; and what any payment made on 1st April, 1961, covered.

The drift of these observations is this: it might be possible, in such a case, to infer that the new tenancy by holding over began when the parties no longer had the original fixed term in mind, and were simply regarding the relationship as a weekly or four-weekly tenancy. It was presumably on this basis that the plaintiff served the notice to quit expiring 23rd June, 1961—and the tenant had not had one day for nothing.

R. B.

Personal Note

Mr. JOHN BRIAN MORLEY, prosecuting solicitor at Portsmouth, was married to Miss Jacqueline Marie Francoise Alberte Morin, in Clermont-Ferrand, France, on 18th November.

Obituary

Mr. DAVID REGINALD LLOYD, B.Sc., retired solicitor, of Haywards Heath, died on 15th November, aged 69. He was admitted in 1949.

Mr. EDWARD GUTHLAC SERGEANT, solicitor, of the legal department of the Board of Inland Revenue, author of "The Law of Stamp Duties," died on 16th November, aged 79. He was admitted in 1908, and retired only last August.

Mr. DOUGLAS AIKENHEAD STROUD, K.S.G., I.S.O., LL.D., retired solicitor, of Wallington, died on 5th November, aged 85. He was admitted in 1900.

Sir WYNN POWELL WHELDON, K.B.E., solicitor, of Bangor, died on 10th November, aged 81. He was admitted in 1907.

Wills and Bequests

Mr. ALLISON HOWARD GOULTY, solicitor, of Manchester, left £44,493 net.

Mr. ALAN JOHN DEVERELL LANGFORD, solicitor, of Harpenden, former deputy town clerk of Derby, left £53,988 net.

Mr. ALAN BRODRICK THOMPSON, solicitor, of Newcastle upon Tyne, left £23,686 net.

Mr. GEORGE ALFRED WEBSTER TURNER, solicitor, of Stockport, left £51,743 net.

Mr. JOHN EDWARD HOLDICH WARTNABY, solicitor, of London, S.W.1, left £334,531 net.

Societies

THE CHESTERFIELD AND NORTH EAST DERBYSHIRE LAW SOCIETY held a joint dinner with the Chesterfield Division of the British Medical Association at the Station Hotel, Chesterfield, on 8th November, at which 110 members and guests attended. Speeches were made by Mr. W. H. Blakesley and Dr. G. May, respectively the president and chairman of the two societies.

HERE AND THERE

DRAMA SUPREME

BEFORE the war, oh yes, and long before Hitler too, persons in authority in Germany had a reputation for exhibiting more than a touch of drama and theatricality in the exercise of their functions and, in a settled spirit of submission, ordinary Germans accepted it as normal to defer to a show of force. Before the first world war, Europe was set laughing by the episode of the Captain of Koepenick, a magnificent hoax achieved by a little man in quite a humble station in life, who, by the simple expedient of putting on an officer's uniform, secured the obedience of a file of soldiers and placed the mayor of the town under arrest. The most magnificent moment of his epic came when the mayor, greatly daring, asked for his authority, and, pointing to the shining bayonets of his escort, he replied: "These are my authority," an explanation which the mayor, like a well-disciplined German official, appears to have accepted as perfectly satisfactory.

CHANGE OF EMPHASIS

THINGS would seem to be very different now in Western Germany. A military uniform backed by a row of bayonets no longer commands instant obedience. On the contrary, the judiciary, clothed with enhanced authority, is over eleven thousand strong, almost an army in itself, an array irresistibly impressive to us in England, who manage to get along with about a hundred and fifty, including county court judges and stipendiary magistrates. Rather to the surprise of those who knew Germany before 1939, these modern judges are displaying a solicitous respect for the human personality of the accused and a careful observance of the decencies of legal process, but every now and then, it seems, a touch of the old taste for the theatrical breaks the serene surface of the new procedure. In its own way the recent story of the Frankfurt library book has a flavour as individual as that of the episode of Koepenick, save that librarians the world over will turn sympathetic thoughts towards the magistrates' clerk who made an order which any librarians' conference would by unanimous resolution approve.

GRAY'S INN

His Honour PERCY CHARLES LAMB, Q.C., has been elected treasurer of Gray's Inn for 1962, in succession to Mr. MICHAEL EDWARD ROWE, C.B.E., Q.C., who has been elected vice-treasurer for the same period.

COLONIAL LEGAL APPOINTMENTS

The following appointments are announced by the Colonial Office: Mr. M. J. ABBOTT to be chief justice, Bermuda; Mr. DATO ABDUL BIN HAJI MOHD. ZAIN AZIZ, senior federal counsel, Brunei, to be attorney-general, Brunei; Mr. V. BOULOUX, senior crown counsel, Mauritius, to be assistant attorney-general, Mauritius; Mr. P. H. COUNSELL, Crown counsel, Northern Rhodesia, to be director of public prosecutions, Northern Rhodesia; Mr. M. DAVID, Crown counsel, Mauritius, to be senior Crown counsel, Mauritius; Mr. K. T. FUAD, Crown counsel, Uganda, to be senior Crown counsel, Uganda; Mr. M. LATOUR-ADRIEN, assistant attorney-general, Mauritius, to be solicitor general, Mauritius; Mr. J. R. GREENE to be magistrate, Hong Kong; Mr. P. STAFFORD to be magistrate, Hong Kong.

VIOLENCE TOWARDS BOOKS

ONLY a librarian knows the multifarious iniquities of book borrowers. They scribble marginal comments in valuable volumes. They have been known to mark their places with rashers of bacon. Even when they do not actually maltreat books, they display a resolute reluctance to return them. Rarely is there an intention to deprive the library permanently of its property. The attitude is rather that of an affectionate host who cannot bring himself to let a cherished guest depart. In the studious Germans this mental condition is, no doubt, particularly pronounced. So it was, probably, with the thirty-three-year-old Frankfurt man who two years ago borrowed from the University Library there a volume worth over £3 and failed to return it. It does not appear from the report of the subsequent proceedings what is the customary procedure followed by German librarians in such a case, whether they send inquiries or reminders first and only later on resort to stronger measures. But one morning this particular borrower found himself roused from his bed by an officer of justice, handcuffed and marched off to a local magistrates' court, where he was asked whether he had yet finished with the volume. One can scarcely doubt that the procedure was effective in extracting a more explicit and wholly satisfactory answer than would have been procured by mere desultory correspondence. Librarians will be sorry to hear that it was all a mistake, a clerical error in the drawing up of an order. The library had invoked the help of the court, but no accusation had been formulated and at that stage the magistrate only proposed to administer a few interrogatories. It was the clerk who drew up the summons who had added with an excess of judicial artistry the authority to use handcuffs. Handcuffs are prescribed for arrests in the case of alleged crimes of violence. Perhaps the book-loving clerk was haunted by visions of books kidnapped, dismembered, drowned, stabbed, burnt with cigarettes, mutilated, stripped of their bindings, so that he thought he had better be on the safe side. The episode ended with apologies and explanations from a spokesman of the Federal Minister of Justice. All the same, handcuffs may sometimes be the only way of dealing with a hardened and desperate book borrower.

RICHARD ROE.

COMMISSIONERS OF ASSIZE

Mr. STEPHEN CHAPMAN, Q.C., has been appointed commissioner of assize at Winchester, Mr. STANLEY REES, Q.C., at Stafford, and Mr. EUSTACE WENTWORTH ROSKILL, Q.C., at Birmingham.

LATE DELIVERY OF PAPERS

The Master of the Rolls said in the Court of Appeal on 23rd November that the court was suffering inconvenience from the failure of appellants in appeals from county courts to deliver papers in time in accordance with the rules. If this bad practice continued the court would have to take the strict course of dismissing the appeal.

Law Lecture

There will be a lecture on "Natural Law as a Basis of Society—A South African View," by Mr. H. J. B. Vieyra, Q.C., of the South African Bar, at the Legal Studies Group of the Newman Association, the Newman Centre, 31 Portman Square, London, W.1, on 12th December, at 6.30 p.m.

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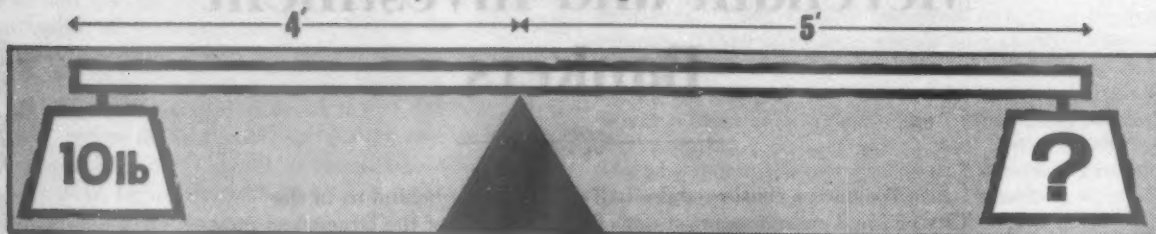
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CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Motor Insurance

Sir,—It is a dangerous thing to question your editorial utterances. However, in your issue of 17th November, under the heading "Insurance: *Uberrima Fides*" (p. 956), you do, I think, venture on to very uncertain ground when you say that the "hotting up" of a motor car engine is necessarily a matter to be referred to insurers and that failure to do so would avoid the policy. The premise, I presume, is that a car with a higher potential speed than another is, in practice, a more dangerous one and *ipso facto* it should bear a heavier insurance premium. Fortunately, the open question as to whether speed and danger necessarily go together does not concern the present issue but only how it affects insurance policies.

In case some of your readers are unaware of the fact several manufacturers offer at extra cost when supplying new cars components that have the effect of raising, often very greatly, the speed potential of the particular car. Insurance companies do not differentiate between these stages of tune (except for actual super-charging) and offer the same terms regardless of type, all things being equal.

Secondly other makes, notably B.M.C., make virtually identical cars with engines of different output. For example, the medium-size Austin, Wolseley, M.G. Magnette and Riley and in another group the Hillman Minx and Sunbeam Rapier are in effect identical cars but with engines in very different states of tune. Insurance does not differ at all between any of them. This appears to point to the conclusion that, in the eyes of an insurer, the high performance type of vehicle does not carry any greater insurance risk. To take a particular case, the owner of a 1,500 c.c. Austin would have to do something very major in the way of "hotting up" to bring the output of his car to the same level as the virtually identical Riley but, presumably, from an insurance point of view the risk remains the same.

In addition to the above it must be remembered that different makes of car of the same engine size have widely different speed potentials but are all lumped together for insurance purposes. If speed potential, as measured by engine output, was a material factor for insurance purposes it would be perfectly easy for the insurance companies, with the aid of readily available road tests in the technical press, to produce a performance factor applicable to any particular vehicle and assess premiums on that and not on mere size.

I therefore suggest that, assuming that no radical changes are made to a car engine, then the form of "hotting up" so widely done by owners at present would not be regarded, if it came to the point, as a material factor, non-disclosure of which would avoid a policy.

In this letter I deliberately ignore sports cars, which are of course assessed in a different way, and supercharging, about which all insurance proposal forms inquire and which I understand will result in insurance loading.

C. H. G. PROCTOR.

Shaldon,
South Devon.

[It does, of course, depend upon the degree of "hotting-up." In our view, if the "hotting-up" substantially increases the performance of a vehicle this would be a "material fact" within s. 207 (3) of the Road Traffic Act, 1960. As far as we are aware, a 1,500 c.c. Austin is not built to deal with the performance of a Riley engine and this fact would seem "to influence the judgment of a prudent insurer."—Ed.]

"After-Sales Service" in Conveyancing

Sir,—If any articulated clerk or young solicitor reads the article "After-Sales Service" in Conveyancing" over the initials H. L. M. in your issue of 17th November, I think he should understand that the attitude of the writer of that article is not the attitude of the majority of the profession.

Solicitors (like mankind in general) may be divided into two groups, those who do as much as they can and those who do as little as they must. I believe it to be true to say that the majority of solicitors fall into the former category.

For those of us who are Christians the matter is determined by authority. Our Lord meant what he said about going the second mile.

M. S. GUNN.

London, N.1.

Demolition Order Procedure

Sir,—In the article, entitled as above, at p. 964 of your issue of 17th November, the author has failed to notice the amendment to s. 58 of the 1936 Act effected by the Public Health Act, 1961 (s. 27 (5) and Sched. V, Pt. II): it is now no longer possible to take action under s. 58 if the building is ruinous or dilapidated. The similar, but simpler, procedure of s. 27 of the 1961 Act may, however, be followed, although this is not likely to be relevant within the context of your article, as such premises will probably not be occupied.

J. F. GARNER.

Faculty of Law,
University of Birmingham.

[Our contributor writes: I regret that in the article referred to I overlooked, when dealing with "The Public Health Act," an amendment of s. 58 (1) of the 1936 Act effected by the 1961 Act in force since 3rd October, 1961. This introduces a simpler procedure when the complaint is of "ruinous or dilapidated condition seriously detrimental to the amenities of the neighbourhood." The local authority may now, without instituting proceedings, require the owner to repair or restore or, if he so elects, to demolish the whole or part—as may be necessary in the interests of amenity (Public Health Act, 1961, s. 27).]

"THE SOLICITORS' JOURNAL," 30th NOVEMBER, 1861

ON 30th November, 1861, THE SOLICITORS' JOURNAL commented on some innovations of Mr. Baron Bramwell: "His Lordship, two or three years ago, was at some pains to do away with . . . the old custom of requiring a witness to remove his glove while being sworn. The general feeling of the community, however, was favourable to the continuance of the usage, because it appeared to be befitting the solemnity in question. For some time past Baron Bramwell has been applying his reforming mind to another solemnity . . . It has been the practice of judges—to our minds a very wholesome and praiseworthy one—when called upon to pass sentence of death upon some wretched criminal . . . 'to improve the occasion' by delivering an address intended at once as a justification of the law, a warning to the wicked, and an adjuration to the prisoner to confession and repentance of his crime . . . Our English public . . . has been in the habit

of considering that the practice indicates not only a decent regard for the value of human life, but also some generous sympathy with suffering humanity, even in its least attractive form. Baron Bramwell, however, appears to think otherwise, and this is the way in which he is reported to have passed sentence, on Wednesday last at the Old Bailey, on Richard Reeve, a youth of eighteen years of age, who was found guilty of the murder of his little sister. We give the report from one of the morning journals: 'Baron Bramwell then put on the black cap, and, addressing the prisoner, said: Richard Reeve, you have been convicted by the jury of the crime of wilful murder, and it appears to me that they could not have done otherwise than find you guilty of that offence. My duty is to pass upon you the sentence of the law for that offence, and that is my only duty. (His lordship then passed the sentence of death in the usual form.)'

REVIEWS

Clerk and Lindsell on Torts. Twelfth Edition. General Editor: A. L. ARMITAGE, M.A., LL.B., of the Inner Temple, Barrister-at-Law. pp. cxxvi and (with Index) 1094. London: Sweet & Maxwell, Ltd. £7 12s. 6d. net.

It would be pure conceit on the part of any reviewer to pretend that he had perused every one or even most of the 1,000-odd pages or the 2,000-odd paragraphs of this massive tome. But then cover-to-cover reading is not the object of a practitioners' reference book, which is what this is *par excellence*. The majority of readers of this journal will already know Clerk and Lindsell in its earlier editions as the place where the answer to any tort problem will be found if there is an answer. In other words, they know both what it is for and what it is like and only require telling how, if at all, it has changed since the preceding edition in 1954. First, there is a new team of editors, strong in numbers (now there are nine of them) and academic repute (with one notable exception, they are all lecturers in law at Cambridge University), and the table of contents indicates which chapters are now the responsibility of whom.

Secondly, certain major alterations in arrangement have been made. For example: separate chapters on vicarious liability, on the effect of death, and on breach of statutory duty now appear; the chapter on dangerous property, premises and things has been split up; and the chapter on notice of action has been replaced by a footnote. Thirdly, apart from major alterations, extensive rewriting has been undertaken by the editors in very many places, in particular in the light of recent developments. So many things have earned a place in this edition by leaving a mark on the law of torts since 1954 that only two of the most important will be mentioned. One is the Occupiers' Liability Act, 1957, which called for, and has got, a virtually new chapter. The other is the very recent decision in the *Overseas Tankship* case (p. 85, *ante*), which has probably sunk *Re Polemis* (see p. 69, *ante*). The resulting position and its complications are both very fully discussed by Mr. R. W. M. Dias in the section on remoteness of damage, and this despite the short notice under which he must have worked. In connection with the *Overseas Tankship* case (now called "the *Wagon Mound* case" in Clerk and Lindsell) it is interesting to note that Mr. Dias concludes (at para. 335c) that it is open to the Court of Appeal to disregard its own decision in *Re Polemis* if it wishes, for the reasons given in our "Current Topic" at p. 93, *ante*, but unlike our paragraph he does not express a view on the position in lower courts. However, be that as it may, on an appraisal by sample this reviewer can say without hesitation that the reputation of Clerk and Lindsell is bound to be still further enhanced by this latest edition, and deservedly so. The law is stated as at 1st July, 1961.

Legal London. By FELIKS TOPOLSKI and FRANCIS COWPER, with a Foreword by the Rt. Hon. LORD BIRKETT, P.C. pp. xi and 75, and 15 plates. 1961. London: Stevens & Sons, Ltd., for *The Lawyer*. £3 13s. 6d. net.

No admirer of Topolski's drawings who is also interested in the law should allow to pass unfulfilled the opportunity of securing a copy of this book, either by purchase or, perhaps more appropriately, by persuasion of a relative or friend to present it to him as a seasonal gift.

Legal London is certainly skilfully portrayed between the covers of this unusual publication, with its illustrations ranging from the impressive double plate of the Re-Opening of the Law Courts to an Inner Temple Luncheon, and from A Solicitor's Office in Gray's Inn to a Lecture in Lincoln's Inn Old Hall. To give one example of detail, a camera could not improve upon the capturing, for generations of solicitors as yet unadmitted, of the striking impression of Sir Thomas Lund's profile in the Solicitors' Admission Ceremony at The Law Society's Hall.

Readers of this Journal will not need to be persuaded that the text is worth reading, because the volume records that its author is none other than our own Richard Roe, surely by now himself part of Legal England, being also—as Lord Birkett mentions in the Foreword—the historian of Gray's Inn, as well as an accredited House of Lords law reporter. His descriptive and flowing style carries the reader entranced through the pages of the book and back nine centuries in time to the days of William

the Conqueror and William Rufus, in connection respectively with the Court of Arches and the original building of Westminster Hall; forward to the death in 1423 of the never-to-be-forgotten Lord Mayor of London, Sir Richard Whittington, who left money utilised for rebuilding Newgate; and past the construction of the Middle Temple Hall in the reign of the first Queen Elizabeth. On we go as the richness of English legal history unfolds right up to modern times, with the sad story of destruction by air raid, to be followed by post-war reconstruction and royal occasions which somehow link the old with the new. Contemporary descriptions there are whose word portraiture will open the eyes of the less observant as much as the drawings. Let one passage speak for itself:—

"For the stranger the heart of the Temple in Fountain Court with its terrace, its two flights of steps, its sparkling, leaping water, its trees, its mellow red-brick buildings and its domestic spaciousness. The children play, the fountain springs up, the active young cats clamber about the branches of the smaller trees grouped round the circle of water, in which goldfish darkly gleam, and there is a whirl of pigeons' wings."

For a stranger to the law this is indeed an enjoyable and accurate guide. Few lawyers there must be who will not add to their knowledge of legal history by its perusal, and none who will not so increase their appreciation, and see significance and beauty where they saw none before. Our only regret is that there is no reference to the Court of Chivalry; that court with its unusual constitution of the Earl Marshal and the Lord Chief Justice of England (sitting as Assessor and Surrogate) well fits the mood induced in us by turning the pages of this magnificent production.

Forensic Fables. Complete Edition. By "O." With a Foreword by the Rt. Hon. LORD BIRKETT, P.C. pp. xv and (with Index) 456. 1961. London: Butterworth & Co. (Publishers), Ltd. £1 17s. 6d. net.

The great thing about "Forensic Fables" is that they wear so extraordinarily well. They were written and illustrated between the wars by a popular and practical member of the Bar, who happened also to be a man of wit and intelligence, and to this day they tell you more about the actual professional life of barristers and judges than you could gather from a bag full of handbooks and biographies. The early editions of the four original volumes are now almost impossible to come by and the present omnibus edition appears in time to make the most acceptable of Christmas presents. The production is pleasantly in keeping with the mock-naïve form of the old-fashioned "moral tale" in which the fables are cast. (A selected reprint of fifty brought out a dozen years ago was bound like a legal text-book.) The costumes in the illustrations may occasionally have a touch of "period" charm, but most of the subject matter is startlingly topical. The speech of the great lawyer at the young barristers' debating society dinner—have we not all heard it in one form or another? The predicament of the brilliant young barrister whose masterly speech had so much less effect on the jury than the performance of a vulgar counsel with a cockney accent—do we not all know the situation? There is one sad omission in the planning of the book. Why was no room found for a little memoir of "O" himself, Theobald Mathew, who was a most interesting and entertaining individual in his own right? A great deal of his personality is reflected in these "fables" and the frontispiece sketch by Orpen gives posterity his features with lively accuracy, but in gratitude for his book he was entitled to rather more than that by way of a memoir.

Atkin's Encyclopaedia of Court Forms in Civil Proceedings. Volume 4. Second Edition. By the Rt. Hon. LORD EVERSHERD, Master of the Rolls. pp. xxix and (with Index) 295. 1961. London: Butterworth & Co. (Publishers), Ltd. £3 8s. net.

Volume 4 of Atkin's Encyclopaedia contains the titles Affiliation and Legitimation Proceedings, Agency, Agriculture, and Animals. The law stated is in general that in force on 1st August, 1961. The general scheme of this edition was reviewed at p. 402, *ante*.

NOTES OF CASES

*These notes are published by arrangement with the Council of Law Reporting. Except in respect of those marked *, full reports of the judgments, revised by the judges, will shortly appear in the Weekly Law Reports. A list of cases reported in today's issue of "W.L.R." is set out at the end of these notes.*

Case Editor: J. D. PENNINGTON, Esq., Barrister-at-Law

Judicial Committee of the Privy Council REVENUE: NEW ZEALAND: TAXATION OF PROFITS OF LIFE INSURANCE COMPANY Australian Mutual Provident Society v. Inland Revenue Commissioners

Viscount Kilmuir, L.C., Lord Denning, Lord Morris of
Borth-y-Gest, Lord Hodson and Lord Devlin
20th November, 1961

Appeal from the Supreme Court of New Zealand.

The appellant, a mutual insurance society incorporated in Australia and carrying on the business of life insurance in New Zealand, allotted to holders of participating policies there for the year 1955 reversionary bonuses of a face value of £2,929,285, the then cash value of which, calculated according to the "net premium valuation" method, in which it was assumed that the cash allotment would accumulate at the rate of 2½ per cent., was £1,736,492. Had the appellant adopted the "bonus reserve valuation" method, in which a rate of 3½ per cent. is taken, the sum in cash required to provide the £2,929,285 face value of the reversionary bonus was £1,393,619, that was, £342,873 less than by the former method. The Commissioner of Inland Revenue contended that the appellant had made an allotment of surplus funds within the meaning of s. 149 of the Land and Income Tax Act, 1954, of New Zealand, amounting to £1,736,492, and assessed it accordingly. Section 149 provided that where a life insurance company "makes to its policyholders . . . an annual allotment of surplus funds by way of reversionary bonuses or otherwise, the residue of the surplus funds so allotted . . . after deducting therefrom any income derived by the company in that year and exempt from taxation (whether by virtue of s. 86 of this Act or otherwise howsoever), shall be deemed to be profits derived by the company in that year." By s. 86: "(1) The following incomes shall be exempt from taxation: (1) Dividends . . . derived from shares . . . in companies, other than companies which are exempt from income tax." The appellant submitted that the true allotment was £1,393,619, and that the excess of £342,873 was not an allotment by way of reversionary bonus but an appropriation to an additional or internal reserve. Its objection to the assessment was disallowed by the stipendiary magistrate, whose decision was upheld by the Supreme Court of New Zealand. The appellant appealed.

LORD DEVLIN, giving the judgment, said that on the plain words of the Act the commissioner was concerned not with the allotment or declaration of a particular reversionary bonus but with the allotment of surplus funds; once he had ascertained that a specific sum had been allotted for the provision of reversionary bonuses his task was concluded. The question as to the amount of an allotment was one of fact, and there was evidence to support the concurrent findings of the courts below that the amount actually allotted was £1,736,492. Secondly, there being nothing in the context to suggest otherwise, the words "exempt from taxation" in s. 86 did not cover income which was not within the reach of the New Zealand tax laws. Accordingly, while admittedly the dividends received in 1955 by the appellant on shares in New Zealand companies fell within s. 86 and were deductible under s. 149, dividends received from English and Australian companies did not so fall and were not, therefore, in arriving at the profits on which the appellant

was to be assessed for the year 1955, deductible from the surplus funds allotted. Appeal dismissed.

APPEARANCES: *F. N. Bucher, Q.C.*, and *N. A. Morrison (Gregory, Rowcliffe & Co.)*; *H. R. C. Wild, Q.C.*, S.-G. of New Zealand, and *Alan S. Orr (Mackrell & Co.)*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law]

Court of Appeal

SALE OF GOODS: C.I.F. CONTRACT: WHETHER POTATOES FIT TO TRAVEL

Mash & Murrell, Ltd. v. Joseph I. Emanuel, Ltd.

Ormerod, Harman and Pearson, L.JJ. 13th May, 1961

Appeal from Diplock, J. ([1961] 1 W.L.R. 862; p. 468, ante).

The plaintiffs, potato merchants, bought from the defendants, who were also potato merchants, 2,000 half bags of Cyprus spring crop potatoes at 16s. per half bag under a c.i.f. contract made on 8th July, 1957. At that date the potatoes had already been loaded at Limassol, Cyprus, aboard the *Ionian* and were afloat bound for Liverpool. On arrival at Liverpool, the potatoes were found to be affected by soft rot and unfit for human consumption, for which purpose, as the defendants knew, they were required. The plaintiffs sued the defendants for damages for breaches of the terms of the contract implied by s. 14 (1) and (2) of the Sale of Goods Act, 1893, that goods sold by a person who dealt in goods of that description should be fit for the purpose for which they were required and that they should be of merchantable quality. Diplock, J., held that the defendants were in breach of the implied terms and awarded the plaintiffs £1,518 2s. damages. The defendants appealed.

ORMEROD, L.J., said that the plaintiffs had to prove that the potatoes were not fit to travel during a normal voyage when loaded on board ship at Limassol, Cyprus, and that it was an implied term of the contract that they should be fit to travel. Whether there was such an implied term raised an interesting question of law, but it did not arise in the present case because, on the evidence, the plaintiffs had failed to discharge the burden of proving that the potatoes were not in a fit state for travel when loaded at Limassol. The only expert witness called in the case thought that the cause of their ultimate condition was heat asphyxiation due to their being stowed in the hold unventilated for five days. The appeal must succeed on the question of fact.

HARMAN and PEARSON, L.JJ., delivered concurring judgments. Appeal allowed.

APPEARANCES: *Ashton Roskill, Q.C.*, and *Michael Kerr, Q.C. (Constant & Constant)*; *T. G. Roche, Q.C.*, and *J. Perrett (Hicks, Arnold & Co.)*.

[Reported by NORMAN PRIMOST, Esq., Barrister-at-Law]

PRACTICE: PLAINTIFF'S CASE AS PLEADED NOT PROVED: JUDGMENT FOR PLAINTIFF ON DIFFERENT BASIS

**Pentony v. Air Ministry*

Ormerod, Harman and Pearson, L.JJ.

21st November, 1961

Appeal from Pilcher, J.

The plaintiff was injured in the course of his employment by the defendants as a labourer at a maintenance unit. He

claimed damages, alleging in his statement of claim that his injuries were sustained while he was assisting other employees in putting a crate on a hand truck. Pilcher, J., found that the moving of the crate, in the course of which the plaintiff was injured, was a single operation by the plaintiff alone but that the defendants were in breach of their duty to the plaintiff by their lack of supervision and failure to operate a safe system of working in allowing the plaintiff, a small, elderly man, to attempt to move the crate by himself, and he awarded him £400 damages. The defendants appealed.

PEARSON, L.J., said that the plaintiff's case as pleaded and sought to be proved had failed, for Pilcher, J., had found that he was engaged upon a single operation. It had been submitted that the judgment was obtained on a case which had not been pleaded, there being no amendment, and further that there was no breach of duty by the defendants. It was a fundamental principle that a plaintiff must prove his case *secundum allegata et probata*. The plaintiff here was relying upon a fundamentally different case when it was suggested that he was doing a one-man operation when his evidence was on the basis that three men were employed. Had he applied for leave to amend, the defendants could have pleaded contributory negligence. If there was to be an amendment it must be properly asked for and granted. As to whether the plaintiff's case should have succeeded had it been pleaded, it seemed to his lordship that it would be extravagant to blame the defendants for not having a safe system when they had provided all necessary implements and had left the workman with a free choice as to their use. His lordship would allow the appeal.

ORMEROD, L.J., agreed.

HARMAN, L.J., concurring, said that it was unfashionable these days to allow a case to turn on points of pleading, but the pleading point here was one of substance. Appeal allowed.

APPEARANCES: *A. C. Bulger (Gouldens)*; *Douglas Draycott (Treasury Solicitor)*.

[Reported by A. H. BRAY, Esq., Barrister-at-Law]

NEGLIGENCE: DOCTOR: SOCIAL CONTACTS BY PSYCHIATRIST WITH PATIENT

**Landau v. Werner*

Sellers, Upjohn and Diplock, L.JJ. 22nd November, 1961
Appeal from Barry, J. (p. 257, *ante*).

In March, 1949, a psychiatrist undertook the treatment of the plaintiff, a middle-aged single woman in an anxiety state. Consultations took place twice a week in the doctor's consulting rooms, psychotherapeutic treatment of an analytical nature being given. By the end of July the plaintiff was much better, but felt that she had fallen deeply in love with the doctor and told him that for that reason she had decided not to continue with the treatment. The doctor thought she was not yet well and between August, 1949, and March, 1950, took her out to tea and dinner in restaurants on a number of occasions and visited her once in her bed-sitting room; there were also conversations between them about spending a holiday together. By March, 1950, the plaintiff's condition had deteriorated and the doctor resumed formal treatment but finally abandoned it as of no avail. The plaintiff's mental condition deteriorated to such an extent that she became incapable of work. In an action for damages against the doctor she alleged that her illness was due to professional misconduct and negligence. Barry, J., absolved the doctor from all charges of professional misconduct but held him negligent in entering into a social relationship with the plaintiff. He awarded the plaintiff £6,000 damages. The doctor appealed. The sole issue in the appeal was whether the doctor's conduct or treatment between August, 1949, and March, 1950, had been negligent.

SELLERS, L.J., said that the real question was whether the social meetings, and the discussion about a holiday together, were bad and negligent practice in the sphere of medicine in which the doctor worked. That was a matter of medical evidence from those versed in this specialised branch of medicine. A doctor's duty was to exercise ordinary skill and care according to the ordinary and reasonable standards of those who practised in the same field of medicine. The standard for the specialist was the standard of the specialists, and a doctor was not negligent if he had acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art. He would add that a doctor might not be negligent if he tried a new technique but if he did he must justify it before the court. If his novel or exceptional treatment had failed disastrously he could not complain if it was held that he went beyond the bounds of due care and skill as recognised generally. Success was the best justification for unusual and unestablished treatment. Here the medical evidence was all one way in condemning social contacts and the doctor had failed to convince the judge that his departure from standard practice was justified and was a reasonable development in this young science. The judge was justified in his view that this unwise treatment had led to the grave deterioration in the plaintiff's health. It was negligent and in breach of the duty of the doctor to his patient. The damages were not excessive and he would dismiss the appeal.

UPJOHN and DIPLOCK, L.JJ., delivered concurring judgments.

APPEARANCES: *John Foster, Q.C.*, and *John Spokes (Le Brasseur & Oakley)*; *G. R. F. Morris, Q.C.*, and *James Dunlop (David J. Griffiths)*.

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law]

LEAVE TO APPEAL TO LORDS ON LAW: CROWN HELD TO CONCESSION NOT TO APPEAL ON FACT

**Rennell v. Inland Revenue Commissioners*

Lord Evershed, M.R., Donovan and Danckwerts, L.JJ.
23rd November, 1961

Application.

On 30th October, 1961 (p. 948, *ante*) the Court of Appeal dismissed an appeal by the Crown from a decision of Buckley, J. that a settlement of £450,000 on discretionary trusts, made by a settlor in March, 1956, and stated to be in consideration of the marriage of his daughter and one C. F., but made for the benefit of a large class of persons not all of whom were within the marriage consideration, was exempt from estate duty on the death of the settlor less than five years from the date of the settlement, by virtue of the provisions of s. 59 (2) of the Finance (1909-10) Act, 1910. When the Crown sought leave to appeal to the House of Lords, the court pointed out that they had affirmed the finding of the trial judge on the question of fact that the transaction was not "colourable" but was on the evidence made in consideration of the marriage in question, and asked whether the Crown sought to appeal on the question of fact as well as on the question of law. Counsel for the Crown, after taking instructions, stated that the Crown would seek to appeal only on the question of law. The court thereupon gave leave to appeal, limited to the question of law. On 23rd November, the Crown applied to be relieved of that restriction since, without suggesting that any part of the transaction was "colourable" in the sense of "improper" or "untrue," it was desired to argue that on the evidence the marriage was the occasion of the settlement rather than the consideration for it.

LORD EVERSLED, M.R., said that he had recently been informed by the House of Lords that it was competent for the Court of Appeal to impose conditions in giving leave to

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IAN DAVID WILSON, Esq. (Peachey & Co.)
STUART HENRY MOREAU WILSON, Esq. (Dawson & Co.)

Solicitors—Markby, Stewart & Wadesons

appeal. Counsel for the Crown said that in tax cases there were mixed questions of law and fact and it would be embarrassing for the Crown to argue this case with this restriction placed on it: there was apparently no precedent in a revenue case for the imposition of a condition of this kind. Counsel for the trustees opposed the application.

LORD EVERSHED, M.R., said that in all the circumstances the court felt that if the Crown desired to be relieved from the concession made it should apply to the Appeal Committee. Application refused.

APPEARANCES: *Sir Reginald Manningham-Buller, Q.C., A.-G., Reginald W. Goff, Q.C. and E. Blanshard Stamp (Solicitor, Inland Revenue); E. I. Goulding, Q.C. (Farrer & Co.).*

[Reported by Miss M. M. Hill, Barrister-at-Law]

LANDLORD AND TENANT: COVENANT NOT TO KEEP ANIMAL "AFTER ANY OBJECTION": DISCRETION TO REFUSE INJUNCTION

Studleygrange Property Co., Ltd. v. Vare

Holroyd Pearce, Willmer and Davies, L.JJ.

23rd November, 1961

Appeal from Clerkenwell County Court.

The tenant of a rent-controlled flat held it on the terms of an agreement that she would observe the general regulations governing the flats. Regulation 9 provided that the tenant should not do or permit to be done in her suite anything which might reasonably be considered to tend to the annoyance of the landlords or other tenants or "keep any animal or animals in her suite after any objection made by and communicated to her by the company." The tenant kept in her flat a neutered female cat called Minnie. In 1960, the landlords' manager was made aware of a smell near the tenant's entrance which he thought emanated from the cat Minnie. He caused two letters to be written objecting to Minnie because of the smell. The tenant continued to keep the cat. The landlords issued a summons alleging, first, that the tenant wrongfully kept a cat which made an offensive smell such as to tend to the annoyance of the company and other tenants, and, secondly, that by the letters they had complained about the smell and nuisance and objected to her keeping the cat in her flat, and that by continuing to keep it she was in breach of reg. 9; and they asked for an injunction and damages. At the trial evidence was called which cleared the cat of all allegations as to smell. The judge held that reg. 9 did not entitle the landlords to object to the cat without any reasonable ground and that, even if there had been a technical breach of reg. 9, he would in the exercise of his discretion have refused an injunction. The landlords appealed.

HOLROYD PEARCE, L.J., said that the landlords' letters were making an objection on the ground of smell and nothing else. The clear meaning of reg. 9 was that the objection must be reasonable and bona fide; and when it was found to have been based entirely on a misapprehension as to the cat and the smell, it was impossible to maintain that the objection was reasonable or even bona fide. The regulations must be construed in their ordinary meaning. They were intended to be read and understood by tenants, and they had the serious aspect that a tenant who broke them, despite the protection of the Rent Acts, would be evicted. The judge was entitled on the facts to take the view that the objection had no reasonable ground to support it. As to the refusal of the discretionary remedy of an injunction, if a tenant flouted a landlord the court would in general grant an injunction, even if the breach were trivial. But here there was no question of flouting the landlord. To the end the tenant had accurately defended an untruthful allegation against her cat. Even if there had been a technical breach by the

tenant, in the peculiar circumstances of the case, where the whole gravamen of the landlords' attack had been based on the smell which was proved to be unfounded, the judge was entitled in his discretion to refuse an injunction. The appeal should be dismissed.

WILLMER and DAVIES, L.JJ., delivered concurring judgments. Appeal dismissed.

APPEARANCES: *J. Platts-Mills (G. L. Leigh); Ralph Millner (Seifert, Sedley & Co.)*

[Reported by Miss M. M. Hill, Barrister-at-Law]

Queen's Bench Division

LANDLORD AND TENANT: BUSINESS PREMISES: TENANT REMAINING IN POSSESSION AFTER NOTICE TO QUIT: VALIDITY OF NOTICE

Rainsbury and Another v. Bass

Widgery, J. 12th October, 1961

Action.

By a tenancy agreement of 21st April, 1958, landlords let a lock-up shop to the tenant for three years from 13th October, 1957, at a rent of £325 a year. On 1st November, 1960, the landlords served a notice under the Landlord and Tenant Act, 1954, to terminate the tenancy on 3rd May, 1961. The tenant continued in possession and paid the rent, but did not apply to the court for a new tenancy under the Act of 1954. On the landlords' claim for possession, the tenant by his pleaded defence alleged that on the expiry of the contractual term on 13th October, 1960, he became a tenant from year to year, and that no effective notice to determine the tenancy had been given. On the hearing of the action, the tenant did not appear and was not represented. The original notice served on the tenant was thus not produced, and the carbon copy of the notice produced on behalf of the landlords was on the statutory form issued in 1954. That form did not comply in all respects with Form 7 in the Schedule to the Landlord and Tenant (Notices) Regulations, 1957, which applied to notices served on or after July, 1957, and differed from the earlier form in that note 5—which provided that there should be compensation for the tenant in certain circumstances—had the following additional words in parentheses at the end of the note: "(No compensation can be claimed unless the tenant has applied to the court for a new tenancy.)" On the evidence there was some doubt as to whether the form served on the tenant had been in the 1954 form or the 1957 form.

WIDGERY, J., said that where a tenant remained in possession of business premises at the expiry of the contractual term under a tenancy subject to Pt. II of the Act of 1954, and continued to pay rent as before, the correct prima facie inference was not that a new yearly tenancy had been created by the parties, but that the tenant's continuance in possession was attributable only to the statutory extension of his tenancy. It followed that the landlords were in a position, on 1st November, 1960, to serve the notice determining the tenancy. On the question whether the notice, if it had been served in the 1954 form, was valid or not, his lordship was satisfied that the 1954 form was "substantially to the like effect" as required by reg. 4 of the regulations of 1957, since the additional phrase as to claims for compensation did not add anything to that already contained in the notice, but merely rendered explicit what was already implicit. Accordingly the notice served was valid to determine the tenancy, and the landlords were entitled to possession. Judgment for the landlords.

APPEARANCES: *Walter Gumbel (Finnis, Downey, Linnell & Price).*

[Reported by Miss M. M. Hill, Barrister-at-Law]

**LOCAL GOVERNMENT: SURCHARGE BY
DISTRICT AUDITOR: WHETHER COUNCILLORS'
ACTION REASONABLE**

**Annisson and Others v. District Auditor for St. Pancras
Borough Council and Another
Taylor and Others v. Same**

Lord Parker, C.J., Ashworth and Veale, JJ.
18th October, 1961

Application under s. 230 of the Local Government Act, 1933.

A local authority, by resolution dated 19th March, 1958, resolved that "... the whole of the valid rent increases under the Rent Act, 1957, in regard to all tenancies of formerly requisitioned properties to owners under s. 4 of the Requisitioned Houses and Housing (Amendment) Act, 1955, be borne by the council." In passing that resolution, the council adopted the housing management committee's report, from which it appeared that two reasons for the decision were that, as it was impossible to consider individual cases without investigating the tenant's income, which they were not prepared to do, the matter should be dealt with as one of policy, and that, as the rents were originally fixed on a fair and reasonable basis, they saw no reason for raising them and were satisfied that by meeting the whole of the increases they would not be placing an unduly heavy burden on the rates. The council had been advised by the town clerk against that action and had had their attention drawn to circulars suggesting what course should be taken. The district auditor considered that the local authority, by omitting to make determinations under s. 4 (4) of the Act of 1955, or to make such inquiries as might properly and reasonably have justified that omission, acted in a manner which was contrary to law, and had thereby negligently incurred expenditure which he fixed at £1,400, and disallowed and surcharged jointly upon twenty-three members of the council. Twenty of the members applied for a declaration under s. 230 (1) of the Local Government Act, 1933, that they had acted reasonably and for relief from personal liability under s. 230 (2).

LORD PARKER, C.J., said that once a declaration was made under s. 230 (1) of the Local Government Act, 1933, two things followed; first, any disqualification imposed by Pt. II of the Act as the result of the surcharge was automatically avoided, and secondly, the court could then consider whether the applicant ought fairly to be excused in whole or in part from personal liability for the surcharge. The court was given a wide discretion in considering relief from personal liability, and should take into consideration all the circumstances, including the means of the applicant, the fact that if relieved the amount would fall on the general body of the ratepayers and also the conduct of the applicant. The court had three alternatives open to it: to make no declaration at all; to make a declaration but not relieve the applicant from personal liability; or to make a declaration and relieve the applicant from personal liability. His lordship had come to the conclusion that all the applicants honestly believed that what they did was authorised by law, and that there was "proper ground" in all their cases for making a declaration. Their conduct, however, could not lightly be excused, for they had ignored the advice of the town clerk, and the circulars from the Ministry. His lordship was not satisfied that they ought fairly to be excused, and relief from personal liability under subs. (2) should not be granted.

ASHWORTH and VEALE, JJ., agreed. Declarations accordingly.

APPEARANCES: D. Turner-Samuels (Gaster & Turner); Norman King (Sharpe, Pritchard & Co.); R. J. Parker, Q.C. (Hanne & Co.); John Ryman (Town Clerk, St. Pancras Borough Council).

[Reported by G. L. PIMM, Esq., Barrister-at-Law] [3 W.L.R. 1146]

**CONTRACT: EXEMPTION CLAUSE: NEGLIGENT
ACT OF SERVANT: WHETHER FUNDAMENTAL
BREACH**

**A. F. Colverd & Co., Ltd. v. Anglo-Overseas Transport
Co., Ltd.**

Barry, J. 20th November, 1961

Action.

The plaintiffs, a firm of watch importers, contracted with the defendants, shipping and forwarding agents, that the defendants should collect goods from London Airport and deliver them to the plaintiffs' office. Under the contract the defendants were exempt from liability for loss or damage, unless the goods were in their actual custody, under their actual control and they had been guilty of wilful neglect. On 22nd February, 1961, the defendants, as was their practice, hired a van with a driver from a third party to collect a crate of Swiss watches, valued at about £4,200, belonging to the plaintiffs from London Airport. On 24th February the driver, after locking the body of the van, but not the van driver's door, and after removing the ignition key, left the van with the watches inside it parked in the street during his forty-minute lunch. The van was stolen. The plaintiffs sued for the value of the watches.

BARRY, J., said that the exempting condition would not apply if the defendants were guilty of a fundamental breach of the contract. They were entitled to rely on the driver's employers to give him instructions about locking the van. The defendants were vicariously liable for the negligence of the driver but, as it was an isolated act, it did not amount to a fundamental breach of the contract, so that the exempting condition operated to exempt the defendants from liability. Judgment for the defendants.

APPEARANCES: Neville Faulks, Q.C., and James Mishkin (Beale & Co.); J. Stephenson, Q.C., and J. S. Wordie (Clyde & Co.).

[Reported by Miss H. STEINBERG, Barrister-at-Law]

**LANDLORD AND TENANT: NOTICE TO QUIT
SMALL TENEMENT: NOTICE OF INTENDED
APPLICATION SIGNED BY HOUSING MANAGER**

R. v. Forest Justices; ex parte Dallaire

Lord Parker, C.J., Ashworth and Stevenson, JJ.
20th November, 1961

Application for certiorari.

On 12th January, 1961, the applicant was served by the local authority with a notice to quit signed by the clerk to the authority. On 16th March, 1961, she was served with a notice of the local authority's intention to apply to the justices for an ejection warrant. That notice was signed by the housing manager. Both notices were served under the provisions of the Small Tenements Recovery Act, 1838, applied to the premises by s. 158 (2) of the Housing Act, 1957. On 28th March, 1961, the justices issued an ejection warrant. The applicant applied for an order of certiorari to quash the warrant on the ground that the notice of intended application should have been signed by the clerk or his lawful deputy in accordance with s. 166 (2) of the Housing Act, 1957. The local authority contended that the notice was valid since under the Act of 1838, under which it had been served, a notice could be signed by the landlord or his agent.

LORD PARKER, C.J., said that this was a borderline case and a matter of first impression. Section 166 (2) of the Act of 1957 did not apply where the claim to possession was made under the Act of 1838. The words used were general and should be read as covering notices served in pursuance of powers contained in the Act of 1957. Section 158 (2) of the Act of 1957 was self-contained and its words did not suggest that it was intended to make s. 166 (2) applicable to notices

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under the Act of 1838. The notice of intended application was therefore properly signed by the housing manager.

ASHWORTH, J., dissenting, said that s. 166 (2) of the Act of 1957 clearly stated that a notice should be signed by the clerk or his lawful deputy, and it should be read in conjunction with s. 158 (2) so as to apply to notices under the Act of 1838. No hardship would arise if the clerk who signed the notice to quit also signed the notice of intended application for a warrant. The Act of 1957 should be regarded as having amended the Act of 1838, so as to invalidate a notice signed by the housing manager.

STEVENSON, J., agreed with the judgment of Lord Parker, C.J. Application dismissed.

APPEARANCES: *Henry Newman (Leslie A. Fawke)*; *J. K. Wood (Martin, Nicholson, Hortin & Nash, for O. J. C. Wellbelove, Reading)*.

[Reported by Miss H. STEINBERG, Barrister-at-Law]

OCCUPIERS' LIABILITY: COMMON DUTY OF CARE: LATENT DEFECT UNKNOWN TO LANDLORD

***Turner v. Waterman**

Veale, J. 23rd November, 1961

Action.

A tenant was injured when a floorboard broke on the landing of a staircase adjacent to a part of the staircase replaced by the landlord due to dry rot. The floor board broke because of dry rot, but the landlord did not know that the landing had also been infected. The tenant sued the landlord for damages, alleging breach of the "common duty of care" owed to all visitors.

VEALE, J., said that a reasonable landlord ought to have known that wood near to wood which was infected with dry rot was likely itself to become infected. Even if the wood appeared to be strong, the landlord should have inspected it frequently to ensure that it remained in that condition. The landlord, therefore, had been guilty of a breach of the "common duty of care" owed to all visitors. Judgment for the plaintiff.

APPEARANCES: *H. Lester (Darracotts)*; *B. Finlay (Davies, Arnold & Cooper)*.

[Reported by Miss H. STEINBERG, Barrister-at-Law]

Probate, Divorce and Admiralty Division

DIVORCE: PETITIONER'S FAILURE TO DISCLOSE ADULTERY: WHETHER DECREE NISI SHOULD BE MADE ABSOLUTE

***Darby v. Darby (Queen's Proctor showing cause)**

Hewson, J. 17th November, 1961

Undefended divorce suit.

The parties were married in 1954. In April, 1959, the husband filed a petition for divorce on the grounds of adultery and desertion, and in July, 1959, in an undefended suit, was granted a decree nisi. The husband did not ask for the discretion of the court and did not disclose that at the time of filing the petition and of the hearing he was living with and committing adultery with another woman, by whom he had had a child. Two months after the granting of the decree nisi and as a result of the co-respondent threatening to reveal the situation, the husband informed his solicitors of his adulterous association. At the subsequent hearing, in which the Queen's Proctor showed cause why the decree nisi should not be made absolute, the husband filed a discretion statement but in it he failed to disclose that there was a second child of his continuing adulterous association.

HEWSON, J., said that there was no excuse for the husband's behaviour. The court must be treated with full and complete frankness in all matters connected with matrimonial affairs. His lordship had no doubt that the husband and the woman with whom he was living had discussed this matter before the hearing in July, 1959, and that the woman had impressed upon the husband how upset her parents would be if the truth came out. But the court was very jealous of the truth. Nevertheless, considering all the circumstances, his lordship was prepared to exercise his discretion and to let the decree nisi stand. In doing so he bore in mind the fact that it was public policy that people should not be encouraged to live in an immoral union and that the position of any children of such a union was of paramount importance. But the necessity of telling the truth to the court was also a matter of public policy and must not be neglected by the parties who came before it. Order accordingly.

APPEARANCES: *A. B. Hollis (Dale & Newbery, Staines)*; *Nigel Curtis-Raleigh (Queen's Proctor)*.

[Reported by Miss MARGARET BOOTH, Barrister-at-Law]

DIVORCE: INCURABLE UNSOUNDNESS OF MIND: STANDARD OF PROOF

***Greer v. Greer (by her guardian)**

Mr. Commissioner Latey, Q.C. 20th November, 1961

Suit for divorce.

A husband petitioned for divorce on the ground of the wife's incurable unsoundness of mind. The Official Solicitor, as the wife's guardian ad litem, filed an answer denying that the wife was incurably of unsound mind. The medical superintendent of the mental hospital in which the wife had been a certified patient since 1936, suffering from schizophrenia, when asked his opinion of the wife's mental condition, said that it was most unlikely that she would make a full social recovery. The wife was fifty-six years of age. His lordship, stating that he was unable, on the evidence, to grant a decree nisi, adjourned the hearing. At the resumed hearing, a consultant psychiatrist stated that in his opinion the wife was an improved, "burned out" schizophrenic, still showing residua of the illness, for which there was no medical cure, and unlikely to be substantially improved by further rehabilitation and re-training, and she would remain of unsound mind. The chances of recovery were infinitesimal and it was reasonable to express the view that the wife was incurably of unsound mind.

Mr. Commissioner LATEY said that the further evidence had satisfied him that the wife was, at the present time, incurably of unsound mind. It was important to observe that, in view of the changes which had taken place in recent years in the treatment of mental disorders, changes which were reflected in the changes in the law effected by the Mental Health Act, 1959, the relatively slight evidence of incurability which would have sufficed twenty years ago to establish the ground for relief could no longer be safely relied upon. The husband would be granted a decree nisi.

APPEARANCES: *Peter Archer (Geddes, Young & Co.)*; *B. H. Pearce (Official Solicitor)*.

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

DIVORCE: BIRTH OF CHILD NINE MONTHS AFTER DECREE ABSOLUTE: WHETHER A PRESUMPTION OF LEGITIMACY

Knowles v. Knowles

Wrangham, J. 21st November, 1961

Issue as to paternity.

On 22nd May, 1957, a wife was granted a decree nisi of divorce on the ground of the husband's desertion. On

5th July, 1957, that decree was made absolute. On 19th April, 1958, the wife gave birth to a child. By a notice dated 9th November, 1959, the wife applied to the court for maintenance for the child, on the basis that the child was a child the marriage of whose parents was the subject of the proceedings. The husband denied that he was the father of the child. An issue was directed to be tried to determine whether the husband was the child's father.

WRANGHAM, J., said that there was a presumption, strong but rebuttable, that a child born to a married woman in wedlock, or conceived by her during wedlock, was a child of her husband. The presumption applied just as much whether the spouses were living together, or were separated by agreement, or by deed, or were simply living apart, or even where the wife had obtained a maintenance order from magistrates, unless the order contained a non-cohabitation clause. The presumption ceased if the parties were separated under an order of the court, such as a decree of judicial separation, or under a separation order made by magistrates. The basis of the presumption was that the law contemplated spouses fulfilling their mutual duties to each other, including the duty to live together, unless there was an order of the court dispensing with the performance of those duties. Neither the presentation of a petition for divorce nor the pronouncing of a decree nisi of divorce absolved the spouses from the duty to live together imposed on them by the marriage. There was therefore a presumption that this child was conceived before, rather than after, decree absolute, and that the husband was the father of the child. Applying that presumption to the facts and evidence in the present case, his lordship held that the child was conceived in the month of June, 1957, and that the husband was the father. It followed that the court had jurisdiction to make orders in the suit for custody and maintenance in respect of the child. Judgment for the wife.

APPEARANCES: *Basil Garland (P. Lupton, The Law Society); Peter Weitzman (Akwyn Williams & Co.).*

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

DIVORCE: DECREE NISI: QUEEN'S PROCTOR SHOWING CAUSE: NO ANSWER: RESCISSION WITHOUT EVIDENCE

Clutterbuck v. Clutterbuck and Reynolds (Queen's Proctor showing cause)

Baker, J. 22nd November, 1961

Motion to rescind decree nisi and to dismiss petition.

On 10th October, 1960, the husband was granted, in an undefended suit, a decree nisi of divorce on the ground of the

wife's adultery with the co-respondent. On 4th August, 1961, the Queen's Proctor entered an appearance in the suit and on 15th August, 1961, he filed a plea alleging that the decree nisi was obtained contrary to the justice of the case, in that between April and June, 1960, the husband had committed adultery with a named woman, but that fact had not been brought to the notice of the court hearing the suit. No answer to the Queen's Proctor's plea having been filed, the Queen's Proctor moved the court to rescind the decree nisi and dismiss the petition. No affidavit of evidence was filed in support of the motion.

BAKER, J., said that counsel appearing on behalf of the Queen's Proctor had informed him that it was not the practice to require evidence in support of a motion by the Queen's Proctor to rescind a decree nisi, where no answer denying the allegations contained in the Queen's Proctor's plea had been filed. There was a statement to that effect in Rayden on Divorce, 8th ed., p. 673, and two cases, *Sheldon v. Sheldon (Queen's Proctor intervening)* (1865), 4 Sw. & Tr. 75, and *Crowden v. Crowden (King's Proctor showing cause)* (1906), 23 T.L.R. 143, were cited in support of the statement. The decree nisi would be rescinded and the petition dismissed. The husband would be ordered to pay the Queen's Proctor's costs.

APPEARANCES: *Brian Neill (Queen's Proctor).*

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

THE WEEKLY LAW REPORTS

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IN WESTMINSTER AND WHITEHALL

ROYAL ASSENT

The following Bills received the Royal Assent on 22nd November:—

**Southern Rhodesia (Constitution)
Tanganyika Independence**

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

Export Guarantees Bill [H.C.] [21st November.

Read Second Time:—

Expiring Laws Continuance Bill [H.C.] [23rd November.

Licensing (Scotland) Bill [H.L.] [21st November.

In Committee:—

Criminal Justice Administration Bill [H.L.]
[23rd November.

B. DEBATE

QUALIFICATION FOR JUDICIAL APPOINTMENT

On the Committee stage of the **Criminal Justice (Administration) Bill** an amendment was moved to cl. 1 providing that at least two of the additional judges to be appointed under the clause should be appointed from among county court judges and stipendiary magistrates. A further amendment, that solicitors of not less than ten years' standing should be eligible for a High Court judgeship, was discussed at the same time.

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Please mention "THE SOLICITORS' JOURNAL" when replying to Advertisements

normal barrister. If it was too big a jump for them to be appointed directly to the High Court, he would settle for county court or stipendiary appointments, with the prospect of a ladder of promotion. He could not understand why more county court judges were not promoted to the High Court; since 1950 only one had been. The prospect of promotion would improve the quality of the county court judges also by encouraging better material to come forward. He asked for an advisory committee to be set up.

LORD CHORLEY said the appointment of a county court judge to the High Court was less of a gamble than that of an advocate. As to the appointment of solicitors, he cited Lynskey, J., as an example of a solicitor who had, after transferring to the Bar, made a very good judge. Solicitors who practised in the county court contended successfully with barrister opponents, and those who practised in the High Court often spent as much time in court as barristers and were as familiar with the technicalities of procedure.

LORD OGMORE spoke in favour of a common system of training, education and examinations for all lawyers. He was against fusion and against solicitors being appointed High Court judges. LORD DENNING said that a regular ladder of promotion would involve the dangers of favouritism and influence. He doubted whether solicitors were sufficiently familiar with the rules of pleading and evidence, and they lacked the long training in advocacy which enabled our judges to deliver a summing-up or an extemporary judgment in a way that was the envy of the civilised world. The right solution was a common system of legal education. LORD MANCROFT was against a ladder of promotion or any proportional adjustment between members of the Bench; the power of the Lord Chancellor should not be fettered. LORD MESTON spoke in favour of fusion and LORD CONESFORD expressed his sympathy for the individual who would, if the first amendment were accepted, be universally known as the statutory county court judge promoted to the High Court Bench.

The LORD CHANCELLOR said that he always considered the lower judiciary when appointments to the High Court Bench were to be made, but no restriction should be placed on him. As to the appointment of solicitors, he said that there was no risk of diluting the quality of the Bench by further appointments from the Bar. He quoted an editorial comment in *THE SOLICITORS' JOURNAL* of 17th November: "Practice at the Bar is the best preparation for the Bench." The "feel" of a case, the atmosphere, the background and the strength, was second nature which came from experience of conducting cases in courts, and High Court work was very different from that of county and magistrates' courts. Any solicitor who was to be considered for appointment would have to be one of the leading members of his profession, and these were not usually men with recent, constant experience of court work, but men who were wise advisers in important matters behind the scenes, in regard to estates, companies and commercial matters.

But the barriers towards ready interchange between the two branches of the profession ought to be removed. He again quoted *THE SOLICITORS' JOURNAL* of 17th November:—

"We have no doubt that practice at the Bar is the best preparation for the Bench and it is the duty of the whole legal profession, solicitors and teachers as well as barristers, to ensure that all who are likely to make good judges have the opportunity to practise as barristers without the artificial barriers which now stand in their way. There should be a closer relationship between the two branches of the profession so that it would be easier to transfer from one to the other..."

The problem of a common system of education, or, at any rate, a system with parts in common, had occupied the Council of Legal Education and The Law Society, and in his view it was plainly desirable that further progress should be made in that direction.

The amendment was withdrawn.

[23rd November.

HOUSE OF COMMONS

PROGRESS OF BILLS

Read First Time:—

Agricultural and Forestry Associations (Trading Agreements) Bill [H.C.] [22nd November.

To provide that certain trading agreements entered into by associations of persons occupying land used for agriculture or forestry shall be exempted from the application of Part I of the Restrictive Trade Practices Act, 1956.

Air Guns and Shot Guns, etc. Bill [H.C.] [22nd November.

To restrict the use and possession of air guns, shot guns and similar weapons.

Carriage by Air (Supplementary Provisions) Bill [H.C.] [22nd November.

To give effect to the Convention, supplementary to the Warsaw Convention, for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier; and for connected purposes.

Coal Consumers' Council (Northern Irish Interests) Bill [H.C.] [22nd November.

To provide for the appointment to the Industrial Coal Consumers' Council and the Domestic Coal Consumers' Council of persons to represent Northern Irish interests.

Companies (Share Transfers) Bill [H.C.] [24th November.

To amend the law relating to instruments of transfer of shares, stock and debentures in companies.

Consumer Test Registration Bill [H.C.] [22nd November.

To provide for the registration of particulars as to the financial state of affairs, control and management of bodies corporate and unincorporate, engaging in the publication of comparative reports on consumer goods or services or in the award of diplomas or of the authority to use marks or emblems denoting approval of such goods or services or their compliance with certain standards, and for the registration of particulars as to the criteria and results of research or investigation carried out for the purposes of such reports or awards; and for purposes connected therewith.

Fair Trade Practices Bill [H.C.] [22nd November.

To prohibit deceptive and misleading advertising and labelling of consumer goods and other unfair trading practices; and for purposes connected therewith.

Hire Purchase Bill [H.C.] [22nd November.

To amend the law relating to hire purchase and sales on credit of goods; and for purposes connected therewith.

Insurance Companies (Share Capital) Bill [H.C.] [22nd November.

To increase the minimum paid up share capital required by an insurance company to which the Insurance Companies Act, 1958, applies.

Landlord and Tenant Bill [H.C.] [22nd November.

To require the giving of information by landlords to tenants; and for purposes connected therewith.

Law Reform (Husband and Wife) Bill [H.C.] [24th November.

To amend the law with respect to civil proceedings between husband and wife.

Local Authorities (Amenities) Bill [H.C.] [22nd November.

To enable local authorities to provide, protect and enhance local amenities.

Local Authorities (Historic Buildings) Bill [H.C.] [22nd November.

To make provision for contributions by local authorities towards the repair and maintenance of buildings of historic or architectural interest; and for purposes connected therewith.

Local Government (Records) Bill [H.C.]

[22nd November.

To amend the law relating to the functions of local authorities with respect to records in written or other form.

Lotteries and Gaming Bill [H.C.] [22nd November.

To make provision with respect to the interpretation of references to private gain in certain enactments relating to lotteries or gaming.

National Assistance Act, 1948 (Amendment) Bill [H.C.]

[22nd November.

To amend section thirty-one of the National Assistance Act, 1948, and to empower local authorities to provide meals and recreation for old people; and for purposes connected therewith.

National Insurance (Widowed Mothers) Bill [H.C.]

[22nd November.

To provide for the abolition of the earnings rule in relation to widowed mothers by the amendment of section seventeen of the National Insurance Act, 1946.

Police Federations Bill [H.C.]

[22nd November.

To amend the law relating to the constitution and proceedings of the Police Federations.

Protection of Amenity Bill [H.C.] [22nd November.

To make better provision for the protection and enhancement of amenity in town and country.

Sexual Offences Bill [H.C.]

[22nd November.

To amend the law relating to homosexual offences.

Shops (Airports) Bill [H.C.]

[22nd November.

To exempt shops at certain airports, and the carrying on of any retail trade or business at or in connection with such shops, from the provisions of Parts I and IV of the Shops Act, 1950; and for purposes connected therewith.

Read Second Time:—

Health Visitors and Social Workers Training Bill [H.C.]

[24th November.

Housing (Scotland) Bill [H.C.]

[22nd November.

Local Government (Financial Provisions, etc.) (Scotland) Bill [H.C.]

[22nd November.

Transport Bill [H.C.]

[21st November.

In Committee:—

Civil Aviation (Eurocontrol) Bill [H.C.]

[24th November.

STATUTORY INSTRUMENTS

Airways Corporations (General Staff, Pilots and Officers Pensions) (Amendment) (No. 2) Regulations, 1961. (S.I. 1961 No. 2161.) 7d.

Cambridge Waterworks Order, 1961. (S.I. 1961 No. 2192.) 7d.

Cardiff Corporation Water (Cefn Mably Reservoirs) Order, 1961. (S.I. 1961 No. 2204.) 7d.

Direct Grant Schools Amending Regulations No. 1, 1961. (S.I. 1961 No. 2203.) 6d.

Improvement of Livestock (Licensing of Bulls) (Scotland) Amendment Regulations, 1961. (S.I. 1961 No. 2163 (S. 122).) 6d.

London-Edinburgh-Thurso Trunk Road (Boston Spa Roundabout and Link Roads) Order, 1961. (S.I. 1961 No. 2184.) 6d.

London Traffic (40 m.p.h. Speed Limit) (No. 11) Regulations, 1961. (S.I. 1961 No. 2159.) 6d.

London Traffic (Prescribed Routes) (Hampstead) Regulations, 1961. (S.I. 1961 No. 2158.) 6d.

London Traffic (Prescribed Routes) (Westminster) (No. 2) Regulations, 1961. (S.I. 1961 No. 2172.) 7d.

National Insurance (Non-participation—Certificates) Amendment Regulations, 1961. (S.I. 1961 No. 2176.) 6d.

North Eastern Sea Fisheries District (Variation of District) Order, 1961. (S.I. 1961 No. 2213.) 7d.

Rent Restrictions (Amendment) Regulations, 1961. (S.I. 1961 No. 2239.) 7d. See p. 996, *ante*.

Rugby Joint Water Board Order, 1961. (S.I. 1961 No. 2193.) 1s. 9d.

Rules of Procedure (Air Force) (Amendment) Rules, 1961. (S.I. 1961 No. 2152.) 8d.

Stirling-Cupar-St. Andrews Trunk Road (Petheram Bridge Diversion) Order, 1961. (S.I. 1961 No. 2162 (S. 121).) 6d.

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Draft Summer Time (1962) Order, 1961. 6d.

Supreme Court (Non-Contentious Probate) Fees Order, 1961. (S.I. 1961 No. 2186 (L.5).) 6d.

This order amends the scales of fees payable on applications for grants of probate or letters of administration where the estate is less than £2,000 in net value. The new scales apply to applications made on or after 1st January, 1962, including applications to officers of Customs and Excise under s. 33 of the Customs and Inland Revenue Act, 1881, which is amended as from that date by the Small Estates (Representation) Act, 1961, so as to permit such applications where the estate is less than £1,000 in net value and less than £3,000 in gross value and the deceased died on or after 10th April, 1946. See article at p. 998, *ante*.

Swansea-Manchester and Chester-Bangor Trunk Roads (Chester Ring Road (Southern Section)) Order, 1961. (S.I. 1961 No. 2171.) 6d.

Wages Regulation (Laundry) (Amendment) Order, 1961. (S.I. 1961 No. 2187.) 6d.

SELECTED APPOINTED DAYS**November**

24th Housing Act, 1961.

December

1st Betting and Gaming Act, 1961, all provisions not already in force, i.e., s. 6; s. 29 (3) and Sched. VI, Pt. II, in so far as they relate to the Street Betting Act, 1906, s. 1 (3).

4th Wages Regulation (Retail Food) (England and Wales) (No. 2) Order, 1961. (S.I. 1961 No. 2072.)

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East Grinstead.—**Mears, P. J. MAY (P. J. May and A. L. Apthorp, F.R.I.C.S., F.A.I., M.R.San.I.)**, 2 London Road. Tel. East Grinstead 315/6.

East Grinstead.—**TURNER, RUDGE & TURNER**, Chartered Surveyors. Tel. East Grinstead 700/1.

Hasocks and Mid-Sussex.—**ATLING & STRUDWICK**, Chartered Surveyors. Tel. Hasocks 882/3.

Hastings, St. Leonards and East Sussex.—**DYER & OVERTON (H. B. Dyer, D.S.O., F.R.I.C.S., F.A.I.; F. R. Hynd, F.R.I.C.S.)**, Consultant Chartered Surveyors, Estd. 1892. 6-7 Havelock Road, Hastings. Tel. 5661 (3 lines).

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Hove.—**PARSONS, SON & BASLEY (W. R. De Silva, F.R.I.C.S., F.A.I.)**, 173 Church Road, Hove. Tel. 34564.

(Continued on p. xxi)

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Worthing.—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 8-14 South Street, Lancing, Sussex. Tel. Lancing 2828.
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Worcester.—BENTLEY, HOBBS & MYTTON, F.A.I., Chartered Auctioneers, etc., 49 Foregate Street. Tel. 5194/5.

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Bradford.—NORMAN R. GEE & HEATON, 72/74 Market Street, Chartered Auctioneers and Estate Agents. Tel. 27202 (2 lines). And at Keighley.

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Leeds.—SPENCER, SON & GILPIN, Chartered Surveyors, 132 Albion Street, Leeds, 1. Tel. 30171.
Scarborough.—EDWARD HARLAND & SONS, 4 Aberdeen Walk, Scarborough. Tel. 834.
Sheffield.—HENRY SPENCER & SONS, Auctioneers, 4 Paradise Street, Sheffield. Tel. 25206. And at 20 The Square, Retford, Notts. Tel. 531/2. And 91 Bridge Street, Worksop. Tel. 2654.

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Swansea.—ASTLEY SAMUEL, LEEDER & SON (Est. 1863), Chartered Surveyors, Estate Agents and Auctioneers, 49 Mansel Street, Swansea. Tel. 55091 (4 lines).

NORTH WALES

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Advertisements should be received by first post Wednesday for inclusion in the issue of the same week and should be addressed to
THE ADVERTISEMENT MANAGER, SOLICITORS' JOURNAL, OYEZ HOUSE, BREAMS BUILDINGS, FETTER LANE, E.C.4. CHANCERY 4855

PUBLIC NOTICES

OGMORE AND GARW URBAN DISTRICT COUNCIL LEGAL AND GENERAL CLERK

Applications are invited for the appointment of Legal and General Clerk at a salary within A.P.T. Grades I/II (£645-£960 per annum) according to ability and experience. Local Government experience not essential but applicants should have good knowledge of Conveyancing.

N.J.C. Conditions of Service, the post is superannuable and the Council operates a 5-day week.

Applications, giving age, particulars of experience and the names and addresses of two referees, to be received by me not later than 11th December, 1961.

ROY HUNTER,
Clerk of the Council.

Council Offices,
Brynmenyn,
Glam.

LANGASHIRE COUNTY COUNCIL

ASSISTANT SOLICITOR required in the Clerk of the County Council's Department. Salary £1,505 to £1,670. Commencing salary according to age and experience. Appointment is superannuable and subject to certificate of fitness. Applications stating age, details of qualifications and experience, and the names of two referees to the Clerk of the County Council (E), County Hall, Preston, by Wednesday, the 13th December, 1961.

CHADDERTON URBAN DISTRICT COUNCIL

LEGAL CLERK wanted primarily for conveyancing. Salary Scale £960 rising to £1,140 p.a. Starting point to be agreed. Five-day week. Housing accommodation will be made available. Applications, stating names and addresses of two referees, to be received by 12th December, 1961, by Clerk of the Council, Town Hall, Chadderton, Lancs.

CORPORATION OF MANCHESTER TOWN CLERK'S DEPARTMENT

Experienced CONVEYANCING CLERKS required. Knowledge of Chief Rents is desirable. Local Government experience not essential. Salary £960 to £1,140. Starting point according to experience. Particulars of age, education, qualifications and experience to Town Clerk, Town Hall, Manchester, by 11th December, 1961.

ESSO PETROLEUM CO. LTD.

Legal Department, Head Office, require a SOLICITOR, preferable age group 23-26. Experience of company and commercial work with City firm an advantage. Salary according to age and experience. The position offers a variety of work and interesting prospects for a young Solicitor, with good pension and other benefits.

Applications should be sent to the Legal Adviser, Esso Petroleum Company, Limited, 36 Queen Anne's Gate, London, S.W.1, marked "Personal."

HAMPSHIRE COUNTY COUNCIL

Applications are invited for the appointment on the staff of the Clerk of the County Council of an ASSISTANT SOLICITOR, with previous experience in Local Government, preferably with a County or County Borough Council, at a salary within Scale F (£2,015-£2,345). Commencing salary will be fixed according to qualifications and experience. Separation allowance and assistance with removal expenses will be paid in approved cases.

Applications, giving full particulars of age, education, qualifications and experience and the names of two referees, should reach the Clerk of the County Council, The Castle, Winchester, by 11th December.

AMENDED ADVERTISEMENT

DARLSTON URBAN DISTRICT COUNCIL APPOINTMENT OF ASSISTANT SOLICITOR

Applications are invited for the above appointment at a salary in accordance with A.P.T. Grade V (£1,310-£1,480), the commencing salary to be determined in accordance with the qualifications and experience of the successful applicant.

Applicants should be able to carry out conveyancing and allied work with only slight supervision.

The post is subject to the usual conditions, including the passing of a medical examination. Housing accommodation will be provided, if required.

Applications, with full particulars of experience, and the names and addresses of two referees, should reach the undersigned not later than 12th December, 1961.

G. R. ROWLANDS,
Clerk of the Council.

Town Hall,
Darlaston,
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PROBATE PRICES

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5% Second Income Loan Stock $\frac{1}{2}\%$
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Both prices are ex the first and second distributions of 40% and 6 $\frac{1}{2}\%$ in respect of the Loan Stock and 4 $\frac{1}{2}\%$ and 1 $\frac{1}{2}\%$ in respect of the Consolidated Stock. If any of these payments had not been received at the date of death, they should be added to the prices.

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BERKSHIRE COUNTY COUNCIL—

CONVEYANCING CLERK required. Salary within A.P.T. III (£960-£1,140). Candidates should hold an examination recognised for promotion purposes (e.g., appropriate certificates of the Solicitors' Managing Clerks' Association). Five-day working week. Canteen and sports facilities available. Staff housing scheme in operation, including payment towards removal expenses. Application forms from the Clerk of the Council, Shire Hall, Reading. Closing date: 16th December, 1961.

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Write Civil Service Commission, Burlington Gardens, London, W.1, for application form, quoting 55/62. Closing date: 3rd January, 1962.

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E. G. BRAITHWAITE, Secretary.

APPOINTMENTS VACANT

W.1 SOLICITORS require experienced Conveyancing Managing Clerk, able to handle a volume of work without supervision. Salary according to experience but in the region of £1,500-£1,600 would be paid to suitable applicant.—Write with details of experience to Box 8224, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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**Classified Advertisements**

continued from p. xxiii

APPOINTMENTS VACANT—continued

CITY Solicitors require admitted or unadmitted Conveyancing Clerk. Write stating full particulars.—Box C 331, c/o Walter Judd, Ltd., 47 Gresham Street, E.C.2.

WEST SUSSEX.—Assistant Solicitor required to take charge of Litigation Department. Possibility of partnership later. Salary according to experience but not less than £1,250.—Box 8228, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

HARROW Solicitors urgently require Managing Clerk or qualified Assistant. Mainly Conveyancing but some litigation experience essential. Please write stating full details of age, experience and salary required.—Box 8069, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

JUNIOR Assistant (Male) required in Cashiers' Department of leading firm of City Solicitors. Good salary and prospects.—Box 8238, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

CONVEYANCING Manager.—Berkshire Solicitors require unadmitted man with sufficient conveyancing experience to work with only general supervision immediately and eventually to fill the position of Conveyancing Managing Clerk. Good opportunity for hard worker.—Box 8234, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

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EAST SUSSEX Coast.—Young Assistant Solicitor required by medium-sized firm to undertake advocacy and litigation. Commencing salary from £1,000 per annum. Write with details of experience.—Box 8237, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

CONVEYANCING Clerks with experience required by old-established Solicitors at Romford and Ilford. Commencing salary up to £1,000 per annum according to age and experience.—Box 8246, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

MEDIUM-SIZED City firm require Assistant Solicitor for Conveyancing department; must be able and willing to undertake considerable volume of work; age preferably under 30; commencing salary up to £1,250 p.a. congenial office; good prospects.—Box 8206, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

CITY Solicitors require Managing Clerk for Conveyancing department; preferably fully experienced and capable of undertaking work without supervision, but less experienced assistant would be considered; good salary appropriate to general capability of applicant.—Box 8207, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

SOUTHEND-ON-SEA solicitors require assistant solicitor for expanding practice, mainly conveyancing and probate, with opportunities for litigation and advocacy; partnership prospects; commencing salary not less than £900 or according to length of experience.—Box 8255, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

LONDON

YOUNG Solicitor, recently admitted, wishing to enter industry and having good experience of general commercial work (knowledge of patent and trade mark law and practice an advantage), required as Assistant to the Head of the legal department serving a large group of companies, with Head Office in the West End; commencing salary by negotiation but anticipated in region of £1,200 per annum; life assurance and non-contributory pension fund; apply in writing, giving age, present remuneration and full particulars of experience.—Box 8251, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

BRADFORD (Yorkshire) Solicitors require experienced probate managing clerk able and willing to work with minimum supervision; knowledge of tax work an advantage; salary up to £1,050; pension scheme.—Box 8252, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

LITIGATION Manager (experienced) required by Lincoln's Inn solicitors; salary by arrangement.—Box 8253, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

SOLICITORS in university city require assistant for mainly unsupervised general work, including conveyancing and some divorce; advocacy an advantage; opportunity to assist in expansion of firm leading to partnership.—Box 8254, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

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OLD-ESTABLISHED family practice, South Bucks, require assistant with a view to partnership; excellent opportunity for right man with personality and capacity for hard work; approximately two years' experience since admission preferred, but newly admitted man might be considered; salary in the region of £1,250, or according to experience; please write giving full details of education and experience.—Box 8257, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

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LITIGATION clerk (young) required by solicitors in the Temple; must have good knowledge of High Court and county court procedure and be capable of reaching managing clerk status; good salary and prospects.—Box 8258, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

FIRM of City solicitors require probate managing clerk with knowledge of income tax and trust accounts; salary by arrangement.—Write Box 8259, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

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MANCHESTER solicitors have vacancy for admitted or unadmitted managing clerk or assistant solicitor with general experience; would give articles to unqualified man; permanent position with definite prospects of partnership.—Box 8262, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

MANCHESTER solicitors have vacancy for articulated clerk with law degree; excellent experience; good opportunity and prospects; no premium; small salary.—Box 8263, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

REQUIRED by old-established firm in Hong Kong, assistant solicitor unmarried; some advocacy including conveyancing, company and court work, probates, etc.; subject to four years' agreement; excellent prospects; commencing salary \$1,800 per month (equivalent to £112 10s.), with annual increments of \$200 for first year and \$100 per year thereafter; full particulars required.—Write Box 448, Reynells, Chancery Lane, W.C.2.

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